

PLEASE DO NOT
SEPARATE WYCAR 11.1.2
WYCSF 12.2.4.5

FILED
LODGED
MAY 05 1994
CLERK AT SEATTLE
U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

FILED
LODGED
ENTERED
RECEIVED

AUG 29 1994

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,
THE SUQUAMISH TRIBE,
THE MUCKLESHOOT INDIAN TRIBE

Plaintiffs,

v.

PACIFIC SOUND RESOURCES, INC.,
THE PACIFIC SOUND RESOURCES
ENVIRONMENTAL TRUST, TED G.
DePRIEST and KARIN DePRIEST,

(b) (6)

TOM L. WYCKOFF and MARGO

G. WYCKOFF, (b) (6)

, and SUSAN

WYCKOFF MULLEN and CHARLES S.

MULLEN, (b) (6)

Defendants.

C94-687

CIVIL ACTION NO.

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf
of the Administrator of the United States Environmental
Protection Agency ("EPA"), the Secretary of the United States
Department of Commerce, the Secretary of the United States

U.S. Department of Justice
NOAA GC-DOJ DARC, BIN C15700
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6604

CONSENT DECREE - 1

118EPA 8F



1027075

1 Department of Interior; and the Suquamish Tribe and the
2 Muckleshoot Indian Tribe ("Plaintiffs"), have filed a complaint
3 in this matter against Pacific Sound Resources, Inc. ("PSR"),
4 formerly the Wyckoff Company, the Pacific Sound Resources
5 Environmental Trust ("Environmental Trust"), Ted G. DePriest and
6 Karin DePriest and (b) (6), Tom L. Wyckoff and
7 Margo G. Wyckoff and (b) (6), and Susan Wyckoff
8 Mullen and Charles S. Mullen and (b) (6)
9 ("Settling Defendants"), pursuant to Sections 106 and 107 of the
10 Comprehensive Environmental Response, Compensation, and Liability
11 Act of 1980, as amended, ("CERCLA"), 42 U.S.C. §§ 9606 and 9607,
12 seeking Natural Resource Damages, injunctive relief for
13 environmental investigatory and response actions arising out of
14 the release and/or disposal of hazardous substances at or from at
15 the Wyckoff/Eagle Harbor Superfund Site and the PSR West Seattle
16 wood treating facility ("Sites"), recovery of all Response Costs
17 incurred by the United States at or in connection with the Sites
18 with accrued interest, and a declaration of Settling Defendants'
19 liability for future Response Costs.

20 B. The United States has incurred and continues to incur
21 Response Costs at or in connection with the Sites.

22 C. Plaintiffs have determined that settlement of this matter
23 is practicable and in the public interest.

24 D. Plaintiffs and Settling Defendants agree to settlement of
25 this matter without further litigation, and without admission of

26 U.S. Department of Justice
27 NOAA GC-DOJ DARC, BIN C15700
28 7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6604

1 liability by Settling Defendants.

2 E. The goals of this Consent Decree are: cessation of wood
3 treating operations at PSR's West Seattle wood treating facility;
4 transfer of all shares, ownership rights and interests in PSR by
5 Individual Settling Defendants to the Environmental Trust; the
6 liquidation of all PSR assets; the payment of the proceeds from
7 the liquidation to PSR creditors and, to the maximum extent
8 possible under the circumstances, to the United States Hazardous
9 Substance Superfund ("Fund") and the registry of this court, as
10 set forth in the Liquidation Plan attached hereto; the orderly
11 transfer of responsibility for the implementation of
12 environmental response actions at the Sites from PSR to EPA
13 contractors or designees; and issuance of covenants not to sue by
14 Plaintiffs to Individual Settling Defendants as set forth in
15 Section XI of this Consent Decree.

16 F. The Parties agree, and the Court by entering this Consent
17 Decree finds, that the above statements are correct, that this
18 Consent Decree has been negotiated by the Parties in good faith
19 and implementation of this Consent Decree will expedite the
20 cleanup of the Sites and will avoid litigation between the
21 Parties, and that this Consent Decree is fair, adequate,
22 reasonable, and in the public interest.

23 NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

24 II. JURISDICTION

25 1. This Court has jurisdiction over the subject matter of

26 U.S. Department of Justice
27 NOAA GC-DOJ DARC, BIN C15700
7600 Sand Point Way NE
Seattle, WA 98115-0070
28 (206) 526-6604

1 this action pursuant to 28 U.S.C. §§ 1331 and 1345, and Sections
2 106, 107, and 113(b) of CERCLA, 42 U.S.C. §§ 9606, 9607, and
3 9613(b). This Court also has personal jurisdiction over the
4 Settling Defendants. Solely for purposes of this Consent Decree
5 and the underlying Complaint, Settling Defendants waive all
6 objections and defenses they may have to jurisdiction of the
7 Court or to venue in this District. The Complaint states claims
8 against Settling Defendants upon which relief may be granted.
9 Settling Defendants shall not challenge this Consent Decree or
10 this Court's jurisdiction to enter and enforce this Consent
11 Decree.

12 III. PARTIES BOUND

13 2. This Consent Decree shall apply to and be binding upon
14 Plaintiffs and upon Settling Defendants and their heirs,
15 successors, trustees, and assigns. Tom L. Wyckoff and Margo G.
16 Wyckoff, (b)(6), and Susan
17 Wyckoff Mullen are PSR shareholders. Charles S. Mullen has
18 served and continues to serve, as a director, officer, and (as a
19 partner/shareholder in the law firm of Graham & Dunn) as counsel
20 to PSR. Susan Wyckoff Mullen has served and continues to serve
21 as a director of PSR. Tom L. Wyckoff served as a director of PSR
22 until his resignation in 1988. Ted G. DePriest is president,
23 former Vice President, and a director of PSR. Karin DePriest is
24 (b)(6) Ted G. DePriest. Nothing in this Consent Decree
25 shall constitute an admission of liability or an admission of any

26 U.S. Department of Justice
27 NOAA GC-DOJ DARC, BIN C15700
28 7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6604

1 facts or Conclusions of Law stated herein, by any Settling
2 Defendant for any purpose.

3 IV. DEFINITIONS

4 3. Unless otherwise expressly provided herein, terms used
5 in this Consent Decree which are defined in CERCLA or in the
6 National Oil and Hazardous Substances Pollution Contingency Plan,
7 also known as the National Contingency Plan ("NCP"), 40 C.F.R.
8 300 et seq., shall have the meaning assigned to them in CERCLA or
9 the NCP. Whenever terms listed below are used in this Consent
10 Decree or in attachments hereto and incorporated hereunder, the
11 following definitions shall apply:

12 A. "Consent Decree" or "Decree" shall mean this Consent
13 Decree and all attachments hereto.

14 B. "Day" shall mean a calendar day unless expressly
15 stated to be a working day. "Working day" shall mean a day other
16 than a Saturday, Sunday or federal holiday. When computing any
17 period of time under this Decree, if the last day would fall on a
18 Saturday, Sunday or federal holiday, the period shall run until
19 the end of the next working day.

20 C. "Environmental Trust" is the Pacific Sound Resources
21 Inc. Environmental Trust, a copy of which is attached hereto as
22 Attachment "C".

23 D. "Individual Settling Defendants" are Ted G.
24 DePriest and Karin DePriest and (b) (6), Tom L.
25 Wyckoff and Margo G. Wyckoff and (b) (6), and

26 U.S. Department of Justice
27 NOAA GC-DOJ DARC, BIN C15700
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6604

1 Susan Wyckoff Mullen and Charles S. Mullen and (b) (6)

3 E. "Liquidation Plan" shall mean the plan attached
4 hereto as Attachment "D".

5 F. "Natural Resource Damages" means damages, including
6 costs of damages assessment, recoverable under Section 107 of
7 CERCLA, 42 U.S.C. § 9607, for injury to, destruction of, or loss
8 of any and all Natural Resources at the Sites.

9 G. "Necessary Expenses" shall mean, and shall be
10 limited to, those expenses required to implement this Consent
11 Decree, including compliance with any other obligations imposed
12 by law in connection with these activities.

13 H. "Paragraph" shall mean a portion of this Consent
14 Decree identified by an arabic numeral.

15 I. "Parties" shall mean all Plaintiffs and all Settling
16 Defendants.

17 J. "Response Costs" shall mean all expenses, costs, and
18 disbursements, direct and indirect, incurred or to be incurred by
19 the United States for response activities, including
20 investigation, oversight, removal or remedial actions, and all
21 administrative and enforcement activities with respect to the
22 Sites including, without limitation: (1) past costs incurred
23 prior to entry of this Consent Decree; (2) all costs for
24 implementing, developing, performing, overseeing or verifying any
25 investigatory or response activities at the Sites, or any

26 U.S. Department of Justice
27 NOAA GC-DOJ DARC, BIN C15700
7600 Sand Point Way NE
Seattle, WA 98115-0070
28 (206) 526-6604

1 requirements of this Consent Decree; and (3) any other or future
2 costs incurred in connection with the Sites after entry of this
3 Consent Decree, including costs in connection with: EPA periodic
4 reviews of the Sites; obtaining any access to the Sites; and any
5 response activities at the Sites which EPA may deem appropriate.

6 K. "Section" shall mean a portion of this Consent
7 Decree identified by a roman numeral and including one or more
8 paragraphs.

9 L. "Sites" shall mean the areal extent of contamination
10 at or from the Wyckoff/Eagle Harbor Superfund Site ("Eagle
11 Harbor"), and at or from the Wyckoff Company West Seattle wood
12 treating facility ("West Seattle"), and areas in very close
13 proximity thereto necessary for the implementation of response
14 activities.

15 V. DESCRIPTION AND HISTORY OF SITES

16 4. In 1991, the Wyckoff Company changed its name to PSR,
17 which is the Wyckoff Company's successor in every respect. PSR's
18 former wood treating facility at Eagle Harbor is located on
19 approximately fifty (50) acres of Bainbridge Island, Washington,
20 on the southeastern shoreline of Eagle Harbor. The former wood
21 treating facility is an operable unit of the Wyckoff/Eagle Harbor
22 Superfund Site which was placed on the National Priorities List
23 ("NPL") on July 22, 1987, at 52 Fed. Reg. 27620. The NPL was
24 established pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605.
25 The Wyckoff/Eagle Harbor Superfund Site consists of the areal

26 *U.S. Department of Justice*
27 *NOAA GC-DOJ DARC, BIN C15700*
7600 Sand Point Way NE
Seattle, WA 98115-0070
28 *(206) 526-6604*

1 extent of contamination in Eagle Harbor, including sediments and
2 intertidal zones thereof, and the areal extent of contamination
3 at and from PSR's former wood treating facility, and all areas in
4 very close proximity thereto necessary for the implementation of
5 response activities at this Superfund Site. To facilitate its
6 management of the Wyckoff/Eagle Harbor Superfund Site, EPA has
7 divided it into three (3) operable units: the Wyckoff facility
8 Operable Unit ("WOU"), consisting of PSR's former wood treating
9 property and any contiguous or related portions of the
10 Wyckoff/Eagle Harbor Superfund Site which EPA determines should
11 be addressed in conjunction with response actions at the
12 facility, a West Harbor Operable Unit ("WHOU") and an East Harbor
13 Operable Unit ("EHOU"). See map, Attachment "B1" to this Consent
14 Decree. EPA completed a Remedial Investigation/Feasibility Study
15 for the WHOU and the EHOU, and issued a Record of Decision
16 ("ROD") for the WHOU in September 1992. A ROD for the EHOU is
17 anticipated in 1993.

18 5. Wood treating operations at Eagle Harbor date back to the
19 beginning of the twentieth century, and continued until 1988,
20 under various owners. PSR, under the name, Wyckoff Company, has
21 solely owned, and been responsible for, operations at the
22 facility since December 1965. Activities at the facility since
23 1988 have been limited to log sorting and storage and work by PSR
24 to comply, or attempt to comply, with an Administrative Order on
25 Consent For Necessary Response Actions, No. 1088-02-17-106 ("1988

26 *U.S. Department of Justice*
27 *NOAA GC-DOJ DARC, BIN C15700*
7600 Sand Point Way NE
Seattle, WA 98115-0070
28 *(206) 526-6604*

Order"), issued on July 29, 1988; and an Administrative Order For Necessary Interim Response Actions, No. 1091-06-03-106 ("1991 Order") issued on June 17, 1991, both of which were issued pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

6. PSR's West Seattle wood treating facility (referred to as "West Seattle" or one of the "Sites" in this Consent Decree) is located at 2801 Southwest Florida Street, Seattle, Washington, on the shore of Elliott Bay, near the Duwamish River, on approximately twenty-two (22) acres of PSR property. See map, Attachment "B2" to this Consent Decree. The Site was formally proposed for listing on the NPL by EPA on May 10, 1993.

7. Wood treating operations at West Seattle also date back to the beginning of the twentieth century, and are on-going. However, as part of this Decree, the Parties have agreed that wood treating operations at West Seattle shall permanently cease upon entry of this Decree, and that there shall be no future wood treating operations by any Settling Defendant, or any successor thereof, at either of the Sites. PSR has solely owned and been responsible for operations at West Seattle since December 1965.

8. Wood treating operations at the Sites have been similar. The primary wood preservatives used were creosote and pentachlorophenol ("PCP"). In addition, substantial quantities of chemonite were used at West Seattle. Organic chemical compounds known as polynuclear aromatic hydrocarbons ("PAHs") comprise up to ninety percent of pure creosote. The following

*U.S. Department of Justice
NOAA GC-DOJ DARC, BIN C15700
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6604*

1 sixteen PAHs are listed as EPA priority pollutants: pyrene,
2 benzo (a) pyrene, benzo(a) anthracene, benzo (b) fluoranthene,
3 benzo (k) fluoranthene, acenaphthylene, fluorene, anthracene,
4 chrysene, phenanthrene, naphthalene, dibenzo (a,h) anthracene,
5 benzo (ghi) perylene, and indeno (1,2,3 - cd) pyrene. Creosote
6 and PCP are generally mixed with petroleum oil prior to use in
7 wood treating. Petroleum oil serves as a carrying mechanism.
8 Chemonite is a water soluble ammoniacal solution containing
9 copper, arsenic and zinc in a weight ratio of 50:25:25,
10 respectively. Chemonite is one to three percent arsenic when
11 diluted to the strength normally used at West Seattle.

12 9. Wood treating operations at the Sites have resulted in
13 soil, groundwater, surface water, and Puget Sound sediment
14 contamination with creosote, PCP and fuel oil at and/or from both
15 Sites, and with chemonite constituent metals contamination at
16 and/or from West Seattle. A significant source of contamination
17 was a "transfer table", used at each of the Sites for loading and
18 unloading retorts, which in each instance was located in a
19 shallow unlined earthen pit known as a "transfer table pit." In
20 addition, solid and hazardous waste from the Sites may have been
21 disposed of at solid waste landfills and hazardous waste
22 treatment, storage and disposal facilities.

23 10. Since 1984, EPA has issued several administrative
24 orders, some of which have been on consent, to the Wyckoff
25 Company pursuant to CERCLA, the Solid Waste Disposal Act, also

26 U.S. Department of Justice
27 NOAA GC-DOJ DARC, BIN C15700
28 7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6604

1 known as the Resource Conservation and Recovery Act, as amended
2 ("RCRA"), 42 U.S.C. §§ 6901 - 6973, and/or the Federal Water
3 Pollution Control Act, also known as the Clean Water Act, 33
4 U.S.C. §§ 1251 - 1387 ("CWA"), and combinations thereof,
5 requiring environmental investigatory and response activities at
6 the Sites. In 1985, Wyckoff Company and certain Wyckoff
7 officials no longer associated with PSR pled guilty to violations
8 of environmental criminal statutes: Section 3008(d)(2)(A) of
9 RCRA, 42 U.S.C. 6928(d)(2)(A) (knowingly and willfully storing
10 hazardous waste at West Seattle without a RCRA permit) and
11 Sections 301(a) and 309(c) of CWA, 33 U.S.C. §§ 1311(a), 1319(c)
12 (willfully and negligently discharging pollutants from a point
13 source without a CWA permit, i.e., wood preserving residues from
14 West Seattle into the West Waterway of the Duwamish River).

15 11. The biocidal characteristics which make creosote,
16 chemonite, and commercial-grade PCP useful wood preservatives
17 also make these substances, and their associated toxic
18 impurities, inherently hazardous to human beings and most other
19 life forms. Pathways for exposure of human beings to these and
20 other hazardous substances, pollutants and contaminants
21 identified at the Sites include ingestion, inhalation and dermal
22 contact. Hazardous substances, pollutants and contaminants
23 identified at the Sites can cause a wide range of significant
24 human health effects and deleterious ecological effects.
25 Specific effects of some of these hazardous substances include:

26 *U.S. Department of Justice*
27 *NOAA GC-DOJ DARC, BIN C15700*
7600 Sand Point Way NE
Seattle, WA 98115-0070
28 *(206) 526-6604*

1 A. Benzo (a) pyrene is a mutagen, and is among the most
2 carcinogenic of the PAH group. Five of the other PAHs set
3 forth in paragraph 5 above, are suspected carcinogens. PAHs
4 generally are also associated with adverse liver and kidney
5 function, and have been reported to be mutagenic, as well as
6 immunosuppressive. Topical exposure to benzo (a) anthracene
7 has been shown to cause chronic dermatitis and other skin
8 disorders; oral exposure of both mice and rats to
9 acenaphthene may cause loss of body weight, changes in
10 peripheral blood, increased aminotransferase levels in blood
11 serum, and morphological damage to the liver and kidneys; and
12 dermal application of chrysene has produced skin tumors in
13 mice. In addition, field and laboratory studies have
14 demonstrated a variety of adverse toxic effects in aquatic
15 organisms exposed to seawater or marine sediments
16 contaminated with creosote, or one or more of its hazardous
17 constituents.

18 B. PCP toxicity in human beings is associated principally
19 with cardiovascular damage which may be lethal. Chronic PCP
20 exposure has been demonstrated to cause hepatic and renal
21 damage and/or dysfunction, chloracne, headaches, muscular
22 weakness and weight loss. PCP preparations may be
23 contaminated with polychlorinated dibenzodioxins ("PCDDs")
24 and polychlorinated dibenzofurans ("PCDFs") which are human
25 carcinogens. PCP is also acutely lethal to a variety of

26 U.S. Department of Justice
27 NOAA GC-DOJ DARC, BIN C15700
7600 Sand Point Way NE
Seattle, WA 98115-0070
28 (206) 526-6604

1 aquatic as well as terrestrial biota, and is associated with
2 many sublethal adverse effects in chronically exposed
3 organisms.

4 C. Exposure to arsenic, classified as a Group A carcinogen
5 by EPA, increases the incidence of skin, lung, liver and
6 lymphoid cancer. It has been observed to cause chromosomal
7 breakage, cytotoxic and mutagenic effects when tested in
8 vitro. Chronic and subchronic exposures have been shown to
9 cause carcinogenesis, cardiovascular disease, neurological
10 disorders, various dermatoses including hyperpigmentation,
11 disquamation and hair loss, hematopoietic depression,
12 anhydremia, liver damage, sensory disturbances, and distal
13 sensorimotor neuropathy with axonal degeneration. In
14 addition, studies have shown adverse toxic effects in aquatic
15 organisms exposed to seawater or marine sediments
16 contaminated with arsenic, zinc and copper.

17 VI. CONCLUSIONS OF LAW

18 12. A. Each of the Sites is a "facility," as defined in
19 Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

20 B. Each of the Settling Defendants is a "person" as
21 defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

22 C. PCP, PAHs, arsenic and other substances listed in
23 paragraphs 8 and 11 above, are "hazardous substances" as defined
24 in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) of CERCLA.

25 D. These hazardous substances have been released at

26 U.S. Department of Justice
27 NOAA GC-DOJ DARC, BIN C15700
7600 Sand Point Way NE
Seattle, WA 98115-0070
28 (206) 526-6604

1 and/or from the Sites into soil, groundwater, and Puget Sound
2 sediments, as the term "release" is defined in Section 101(22) of
3 CERCLA, 42 U.S.C. § 9601(22). The potential for future migration
4 of hazardous substances from the Sites constitutes a threat of
5 release.

6 E. The release and threat of additional releases of one
7 or more hazardous substances at or from the Sites may present an
8 imminent and substantial endangerment to the public health or
9 welfare or the environment.

10 F. The contamination and endangerment at the Sites
11 constitutes an indivisible injury. The response actions to be
12 funded pursuant to this Consent Decree are necessary to protect
13 the public health, welfare, and the environment.

14 G. EPA, in accordance with its statutorily imposed
15 regulatory responsibilities, and acting in its regulatory
16 capacity, has determined that public health and welfare and the
17 environment shall be advanced by this Decree. EPA, its agents,
18 employees, and/or consultants are not, and shall not be, an
19 operator, within the meaning of CERCLA or RCRA, of either Site,
20 as a result of activities under this Consent Decree.

21 VII. EPA ORDERS/FUTURE OF PSR

22 13. Nothing in this Consent Decree shall prevent EPA from
23 issuing administrative orders to the Environmental Trust or to
24 PSR following the entry of this Decree, mandating cooperation
25 with EPA in its performance of response activities at the Sites,

26 U.S. Department of Justice
27 NOAA GC-DOJ DARC, BIN C15700
28 7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6604

1 or other injunctive relief with respect to the Sites. This
2 Consent Decree supersedes all outstanding administrative orders
3 previously issued by EPA with respect to the Sites. Any future
4 administrative orders issued by EPA to the Environmental Trust
5 with respect to the Sites shall not be reviewable under the
6 dispute resolution provisions of this Consent Decree, or by any
7 other means. Upon entry of this Decree, PSR will continue to
8 exist as a lawful corporation with Individual Settling Defendant
9 Ted G. DePriest as its sole officer and director. However, upon
10 entry of this Decree, Ted G. DePriest, as the sole PSR director,
11 shall recommend the dissolution of PSR to the Environmental
12 Trust, the sole shareholder of PSR. In accordance with
13 Attachment "C" hereto, the Environmental Trust shall approve the
14 proposal to dissolve PSR, and the dissolution of PSR shall be
15 effected in accordance with Chapter 23B.14 of the Revised Code of
16 Washington ("RCW") and this Consent Decree.

17 VIII. OBLIGATIONS OF INDIVIDUAL SETTling DEFENDANTS

18 14. Individual Settling Defendants certify to the best of
19 their knowledge, information and belief that Attachment "E"
20 fairly presents the financial position and condition of PSR,
21 including PSR's liabilities, contingent or otherwise, except
22 environmental liabilities, and PSR's material assets. Included
23 in Attachment E are PSR financial statements for 1988 through
24 1992, which have previously been supplied to the United States,
25 and financial statements for the period ended June 30, 1993.

26 *U.S. Department of Justice*
27 *NOAA GC-DOJ DARC, BIN C15700*
7600 Sand Point Way NE
Seattle, WA 98115-0070
28 *(206) 526-6604*

1 Individual Settling Defendants also certify to the best of their
2 knowledge, information and belief that there are no facts or
3 circumstances which have not been disclosed to Plaintiffs which
4 may, alone or in the aggregate, reasonably be expected to have a
5 material adverse impact on the financial position or condition of
6 PSR. For purposes of this paragraph, "material adverse impact"
7 is defined as \$20,000.

8 15. Individual Settling Defendants Tom L. Wyckoff, Margo G.
9 Wyckoff and Susan Wyckoff Mullen agree to transfer all shares,
10 ownership rights and interests in PSR to the Environmental Trust
11 upon entry of this Decree. Individual Settling Defendants
12 Charles S. Mullen and Susan Wyckoff Mullen agree to resign as
13 directors of PSR, and Charles S. Mullen agrees to resign as
14 secretary of PSR. Individual Settling Defendant Ted G. DePriest
15 agrees to become an employee of the Environmental Trust, pursuant
16 to the Employment Agreement attached to this Decree as Exhibit
17 "F", for the purposes of assisting the Environmental Trust in
18 liquidating all PSR assets, and in complying with the reporting
19 requirements set forth in this Decree.

20 IX. OBLIGATIONS OF THE ENVIRONMENTAL TRUST

21 16. All assets and resources of PSR shall be liquidated and
22 the proceeds therefrom shall be disbursed by the Environmental
23 Trust pursuant to the Liquidation Plan. Such proceeds from this
24 liquidation which are exclusively for the benefit of Plaintiffs
25 shall be paid as follows: One half into the United States

26 U.S. Department of Justice
27 NOAA GC-DOJ DARC, BIN C15700
28 7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6604

1 Hazardous Substance Superfund Trust ("Fund") in the manner set
2 forth below, and the other one-half into the registry of this
3 court, as set forth in the Liquidation Plan, and in accordance
4 with the Memorandum of Agreement ("MOA") among the Plaintiffs,
5 Attachment "A" hereto. The MOA was entered into by the
6 Plaintiffs to ensure that settlement proceeds would be applied
7 toward both environmental response and natural resource
8 restoration goals. Proceeds payable to the Fund shall be paid by
9 Electronic Funds Transfer ("EFT" or wire transfer) to the U.S.
10 Department of Justice ("DOJ") lockbox bank, referencing DOJ Case
11 Number 90-7-1-525, and the EPA Region and Site/Spill ID# 10xx.
12 Payments by EFT must be received at the DOJ lockbox bank by 4
13 p.m. (Eastern Time) to be credited on that day. The
14 Environmental Trust shall forward copies of the EFT to: 1)
15 Chief, Environmental Enforcement Section, Environment and Natural
16 Resources Division, U.S. Department of Justice, P.O. Box 7611,
17 Ben Franklin Station, Washington, D.C. 20044, Re: DJ # 90-7-1-
18 525; 2) EPA Project Coordinator, PSR Consent Decree, HW-113, and
19 3) EPA Region X Hearing Clerk, SO-155, 1200 Sixth Avenue,
20 Seattle, WA 98101.

21 17. Unless otherwise instructed by EPA, the Environmental
22 Trust and PSR shall use best efforts to:

23 A. Maximize the amount of funds paid into the Fund and
24 the registry of this court, consistent with this Consent Decree.

25 B. Pay all property taxes in a timely manner and

26 U.S. Department of Justice
27 NOAA GC-DOJ DARC, BIN C15700
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6604
28 CONSENT DECREE - 17

1 maintain fire and casualty insurance in an amount equal to the
2 fair market value of each insured property specified below, and
3 Comprehensive General Liability insurance with policy limits of
4 at least One Million Dollars (\$1,000,000) per person, unless
5 otherwise directed by EPA, on:

6 i. all non-wood treating real property held by the
7 Environmental Trust until such property has been liquidated in
8 accordance with this Consent Decree; and

9 ii. the former wood treating facility at Eagle
10 Harbor.

11 C. Assist the Plaintiffs in accomplishing their
12 environmental cleanup and natural resource restoration goals and
13 plans for the Sites, including, but not limited to, promptly
14 complying with any requests for information and data which they
15 may deem necessary to implement this Consent Decree, and granting
16 the United States unlimited access to all PSR property at the
17 Wyckoff/Eagle Harbor Superfund Site at all times for the purpose
18 of taking such response actions as the United States may deem
19 appropriate. An Access Agreement executed by PSR and the
20 Environmental Trustee is attached to this Consent Decree as
21 Attachment "G".

22 18. Unless otherwise directed by EPA, Settling Defendant Ted
23 G. DePriest as employee of the Environmental Trust, or his
24 successor, shall prepare and submit complete and accurate reports
25 to EPA by the tenth (10th) day of each month following entry of

26
27
28
*U.S. Department of Justice
NOAA GC-DOJ DARC, BIN C15700
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6604*

1 this Decree documenting implementation of the Liquidation Plan.

2 19. Unless otherwise directed by EPA, Settling Defendant Ted
3 G. DePriest shall prepare and submit complete and accurate
4 financial reports to EPA within thirty (30) days following entry
5 of this Decree, covering the period from December 31, 1992 until
6 entry of this Decree. These reports shall include

7 (a) A detailed income statement;

8 (b) A balance sheet;

9 (c) A statement of cash flow;

10 (d) A report of compensation paid to employees,
11 officers and directors, by individual and job classification;

12 (e) A report detailing any transactions with Settling
13 Defendants; and

14 (f) A schedule of all accounts and notes receivable and
15 payable.

16 The schedules of accounts receivable and payable shall list the
17 name, date and amount of all accounts, and accounts payable shall
18 include a description of each transaction which created the
19 liability. All financial reports required by this Section IX of
20 this Consent Decree shall be prepared in accord with Generally
21 Accepted Accounting Principles ("GAAP"); and Settling Defendant
22 Ted G. DePriest shall sign the financial reports submitted to EPA
23 and shall certify that they are complete and accurate to the best
24 of his knowledge, information and belief. The financial reports
25 shall be reviewed by an independent certified public accounting

26 *U.S. Department of Justice*
27 *NOAA GC-DOJ DARC, BIN C15700*
7600 Sand Point Way NE
Seattle, WA 98115-0070
28 *(206) 526-6604*

1 firm acceptable to EPA, and shall state in its transmittal letter
2 with respect to the required annual reports and the final reports
3 whether it is aware of any material modifications that should be
4 made in the reports for them to be in conformity with GAAP. Upon
5 request, the United States or its representatives may review the
6 accountants' working papers or interview the accountants.

7 20. Unless otherwise directed by EPA, Settling Defendant Ted
8 G. DePriest as employee of the Environmental Trust, or his
9 successor, shall prepare and submit complete and accurate
10 financial reports to EPA by the tenth (10th) day of each month
11 following entry of this Decree. These reports shall include

12 (g) A detailed income statement;

13 (h) A balance sheet;

14 (i) A statement of cash flow;

15 (j) A report detailing compensation paid to the Trustee
16 or other Trust employees;

17 (k) A report detailing any transactions with Settling
18 Defendants;

19 (l) A schedule of all accounts and notes receivable and
20 payable; and

21 (m) A schedule of all cash receipts and disbursements.

22 The income statement shall be compiled on a monthly and year-to-
23 date basis. The schedules of accounts receivable and payable
24 shall list the name, date and amount of all accounts. All
25 financial reports shall be prepared in accord with GAAP.

26 U.S. Department of Justice
27 NOAA GC-DOJ DARC, BIN C15700
7600 Sand Point Way NE
Seattle, WA 98115-0070
28 (206) 526-6604

1 Settling Defendant DePriest as employee of the Environmental
2 Trust, or his successor, shall sign the financial reports
3 submitted to EPA and shall certify that they are complete and
4 accurate to the best of his knowledge, information and belief.

5 21. Settling Defendant Ted G. DePriest as employee of the
6 Environmental Trust, or his successor, shall maintain a complete
7 log of all inquiries, discussions and negotiations for sale of
8 any PSR asset, including the identity of the persons involved,
9 company affiliation, address, telephone number, date of the
10 communication, summary of the communication and the identity of
11 the asset.

12 22. Settling Defendant Ted G. DePriest as employee of the
13 Environmental Trust, or his successor, shall prepare and submit
14 to EPA within ten (10) days following liquidation of all PSR
15 property and completion of the Liquidation Plan a final report
16 documenting performance of the Liquidation Plan. This report
17 shall include:

18 (n) A detailed income statement;

19 (o) A balance sheet;

20 (p) A statement of cash flow;

21 (q) Documentation of all sales of real property and personal
22 property having a fair market value of over \$20,000, including
23 the date of the sale, the buyer and the consideration paid. The
24 final report shall be prepared in accord with GAAP. Settling
25 Defendant DePriest as employee of the Environmental Trust, or his

26 *U.S. Department of Justice*
27 *NOAA GC-DOJ DARC, BIN C15700*
7600 Sand Point Way NE
Seattle, WA 98115-0370
28 *(206) 526-6604*

1 successor, shall sign the final report and shall certify that it
2 is complete and accurate to the best of his knowledge,
3 information and belief.

4 23. Except as specifically set forth in the Liquidation Plan
5 attached to this Decree, PSR and the Environmental Trust are
6 prohibited from engaging in the following activities without
7 prior written approval from EPA:

8 A. Entering into new contracts or extensions of
9 existing contracts;

10 B. Obtaining additional loans;

11 C. Conducting any financial transactions with officers,
12 directors, Settling Defendants or affiliated persons;

13 D. Directly or indirectly agreeing to create, incur,
14 assume or permit or creating, incurring, assuming or permitting
15 any lien on, or with respect to, any property or other assets,
16 whether currently owned or hereafter acquired, or any income or
17 profits therefrom;

18 E. Paying dividends or making any other distribution to
19 any shareholders;

20 F. Loaning any funds or any asset, or guaranteeing in
21 any manner the debt of any other entity or individual;

22 G. Making expenditures or utilizing credit for
23 purchases totalling in excess of \$5,000 in any one week;

24 H. Purchase of assets in excess of \$5,000 in any one
25 week;

26 U.S. Department of Justice
27 NOAA GC-DOJ DARC, BIN C15700
28 7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6604

1 I. Selling any assets or services other than in the
2 ordinary course of business; or

3 J. Accepting orders for woodtreating goods or services.

4 24. Promptly upon receipt thereof, the Environmental Trust
5 shall submit copies of all accountants' reports, including
6 without limitation any comment or management letters regarding
7 any accountants' annual review, to Plaintiffs.

8 25. Immediately upon service of process instituting any
9 action, suit, proceeding, governmental investigation or notice of
10 violation by any governmental agency other than EPA, or any
11 arbitration or other alternative dispute resolution procedure, by
12 or against PSR or the Environmental Trust, or any of its
13 properties or other assets, PSR or the Environmental Trust shall
14 submit notice thereof to Plaintiffs.

15 26. Plaintiffs shall have access to all Environmental Trust
16 personnel, books and records during normal business hours for
17 purposes of evaluating the Environmental Trust's financial status
18 or compliance with this Decree.

19 27. If, despite the best efforts of PSR, the Environmental
20 Trust and Settling Defendant Ted G. DePriest, any Settling
21 Defendant concludes PSR must file a petition in bankruptcy or
22 request a receiver, unless otherwise required by law, such
23 Settling Defendant(s) shall submit written notice of such
24 decision to EPA within five (5) days after such decision is made
25 and shall use best efforts to ensure such notice is given to EPA

26 U.S. Department of Justice
27 NOAA GC-DOJ DARC, BIN C15700
7600 Sand Point Way NE
Seattle, WA 98115-0070
28 (206) 526-6604

1 not less than sixty (60) days prior to any intended bankruptcy
2 filing or request for a receiver. Such Settling Defendant(s)
3 shall submit any and all documentation or other information which
4 supports the decision to seek protection of the bankruptcy court
5 or a receiver with the written notice to EPA for review. Any
6 such filing or request submitted or supported on behalf of PSR,
7 including any submission by a trustee in bankruptcy to the
8 bankruptcy court or other court shall seek to accomplish the
9 goals of this Consent Decree, and shall to the greatest extent
10 possible incorporate the terms of this Consent Decree. PSR and
11 the Environmental Trustee, or a trustee in bankruptcy shall agree
12 to any filing or request by any Plaintiff to such court which
13 incorporates or implements the terms of this Consent Decree, or
14 which seeks to accomplish the goals of this Consent Decree,
15 unless otherwise required by law.

16 28. Notwithstanding any provision of this Consent Decree,
17 Plaintiffs retain all of their access and information gathering
18 authorities and rights, including enforcement authorities related
19 thereto, under CERCLA, RCRA, and any other applicable laws or
20 regulations.

21 X. REAL PROPERTY SALES

22 29. The Liquidation Plan shall include a written Real
23 Property Marketing Plan ("RPMP") which shall set forth a proposal
24 for marketing all PSR real property, other than the Sites, for
25 sale at fair market value on terms acceptable to EPA.

26 U.S. Department of Justice
27 NOAA GC-DOJ DARC, BIN C15700
7600 Sand Point Way NE
Seattle, WA 98115-0070
28 (206) 526-6604

1 30. The Environmental Trust shall offer all real property
2 included in the RPMP for sale. Whenever an offer is made by a
3 prospective purchaser, the Environmental Trust shall immediately
4 notify EPA in writing. EPA shall determine, in its non-
5 reviewable discretion, whether the offer should be accepted or
6 rejected, or whether a counter proposal should be made, and the
7 terms thereof.

8 31. Any agents employed by the Environmental Trust to
9 implement the RPMP shall make the United States a third party
10 beneficiary of any contracts entered into on behalf of the
11 Environmental Trust, including contracts with any commercial
12 realtor.

13 XI. COVENANTS NOT TO SUE BY THE UNITED STATES

14 32. For purposes of this Section of this Consent Decree,
15 "Covered Matters" shall include any civil liability to Plaintiffs
16 arising out of the release or threatened release of hazardous
17 substances, pollutants or contaminants at or from the Sites which
18 occurred or existed prior to the entry of this Consent Decree
19 ("Existing Conditions").

20 33. Subject to Sections XII (Reservation Of Rights) and
21 XVIII (Termination) of this Consent Decree, Plaintiffs covenant
22 not to file a civil action or take administrative action against
23 Individual Settling Defendants Ted G. DePriest and Karin DePriest
24 and (b) (6), Tom L. Wyckoff and Margo G. Wyckoff
25 and (b) (6), and Susan Wyckoff Mullen and Charles

26 *U.S. Department of Justice*
27 *NOAA GC-DOJ DARC, BIN C15700*
7600 Sand Point Way NE
Seattle, WA 98115-0070
28 *(206) 526-6604*

1 S. Mullen and (b) (6), or any of them, under
2 CERCLA or section 7003 of RCRA, 42 U.S.C. § 6973, for Covered
3 Matters, subject to the contingency set forth in Paragraph 34
4 below, and provided that said Individual Settling Defendants
5 perform their respective obligations under this Consent Decree;
6 and provided further that the covenant not to sue granted to
7 Settling Defendants DePriest shall not vest until Ted G. DePriest
8 has performed his duties as employee of the Environmental Trust,
9 as set forth in this Decree.

10 34. The covenants not to sue set forth in the preceding
11 Paragraph are contingent upon the truthfulness of information
12 provided to Plaintiffs by the Individual Settling Defendants
13 through affidavits. In the event Plaintiffs, or any of them,
14 believe an Individual Settling Defendant(s) made a material
15 misrepresentation in an affidavit, or failed to perform their
16 respective obligations under this Consent Decree, Plaintiffs, or
17 any of them, may seek to withdraw or modify the covenant(s) not
18 to sue by:

19 (a) giving written notice to such Individual Settling
20 Defendant(s) setting forth the basis of the claim that the
21 covenant(s) not to sue should be withdrawn or modified; and

22 (b) instituting proceedings in this court against such
23 Settling Defendant(s) for recovery of Response Costs and such
24 other claims against such Individual Settling Defendant(s) that
25 Plaintiffs, or any of them, may have. In such proceedings, the

26 U.S. Department of Justice
27 NOAA GC-DOJ DARC, BIN C15700
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6604

1 parties agree to jointly petition the court for an expedited
2 determination of the validity of such Individual Settling
3 Defendant(s)' covenant not to sue, including an expedited
4 evidentiary hearing or such other proceedings as this court deems
5 necessary to resolve all legal and factual issues material to
6 determining the validity of the covenant not to sue.

7 35. In any action by Plaintiffs, or any of them, against an
8 Individual Settling Defendant(s), if such Individual Settling
9 Defendant(s) asserts the covenant not to sue in this Section as
10 an affirmative defense, such Settling Defendant(s) shall have the
11 burden of proving that Settling Defendant(s) did not violate this
12 Consent Decree as alleged by Plaintiffs, or any of them, in the
13 pleading described in Paragraph 34 above, instituting action
14 against such Individual Settling Defendant(s).

15 36. If a covenant not to sue is withdrawn or modified by
16 this court with respect to an Individual Settling Defendant, such
17 Individual Settling Defendant may plead any defense he/she may
18 have, including laches, waiver, estoppel, or lack of
19 jurisdiction; provided however, that any statute of limitations
20 or other time limitation respecting claims by Plaintiffs against
21 such Individual Settling Defendant(s) are tolled in their
22 entirety until six (6) months after the covenant not to sue has
23 been withdrawn or modified. Each Individual Settling Defendant
24 waives any defense relating to statutes of limitations, laches or
25 timeliness based on the time between entry of this Decree and six

26 *U.S. Department of Justice*
27 *NOAA GC-DOJ DARC, BIN C15700*
7600 Sand Point Way NE
Seattle, WA 98115-0070
28 *(206) 526-6604*

1 (6) months after withdrawal or modification of his/her covenant
2 not to sue by this court.

3 37. Any dispute between Plaintiffs, or any of them, and any
4 Individual Settling Defendant(s) with respect to this Section
5 shall be within the exclusive jurisdiction of this court, and the
6 Section XVI (Dispute Resolution) of this Decree shall not apply.

7 XII. RESERVATION OF RIGHTS

8 38. Nothing in this Consent Decree is intended as a release
9 from or covenant not to sue for any claim or cause of action,
10 administrative or judicial, civil or criminal, past or future, in
11 law or in equity, which Plaintiffs, or any of them, may have
12 against any person, firm, corporation other than the Individual
13 Settling Defendants given covenants not to sue as set forth in
14 Section XI of this Consent Decree.

15 XIII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

16 39. Nothing in this Consent Decree shall be construed to
17 create any rights in, or grant any cause of action to, any person
18 not a party to this Consent Decree. The preceding sentence shall
19 not be construed to waive or nullify any rights that any person
20 not a signatory to this Consent Decree may have under applicable
21 law. All of the Parties expressly reserve any and all rights
22 (including, but not limited to, any right to contribution),
23 defenses, claims, demands, and causes of action which they may
24 have with respect to any matter, transaction, or occurrence
25 relating in any way to the Sites against any Persons not Parties

26 U.S. Department of Justice
27 NOAA GC-DOJ DARC, BIN C15700
7600 Sand Point Way NE
Seattle, WA 98115-0070
28 (206) 526-6604

1 to this Consent Decree.

2 40. With regard to claims for contribution against Settling
3 Defendants for matters addressed in this Consent Decree, the
4 Parties hereto agree that Settling Defendants are entitled to the
5 full extent of protection from contribution actions or claims
6 provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

7 41. Settling Defendants agree that, with respect to any suit
8 or claim for contribution brought by them for matters related to
9 this Consent Decree, they will notify Plaintiffs in writing no
10 later than sixty (60) days prior to the initiation of such suit
11 or claim.

12 42. Settling Defendants agree that, with respect to any suit
13 or claim for contribution, or on any other basis, brought against
14 them for matters related to this Consent Decree, they will notify
15 Plaintiffs in writing within ten (10) days after service of any
16 complaint on them. In addition, Settling Defendants shall notify
17 Plaintiffs within ten (10) days of service or receipt of any
18 Motion for Summary Judgment in such an action, and within ten
19 (10) days of receipt of any order from a court setting a case for
20 trial.

21 XIV. COVENANTS BY SETTLING DEFENDANTS

22 43. Settling Defendants hereby covenant not to sue and agree
23 not to assert any claims or causes of action against Plaintiffs,
24 or any of them, with respect to the Sites or this Consent Decree,
25 including, but not limited to, any direct or indirect claim for

26 *U.S. Department of Justice*
27 *NOAA GC-DOJ DARC, BIN C15700*
7600 Sand Point Way NE
Seattle, WA 98115-0070
28 *(206) 526-6604*

1 reimbursement from the Hazardous Substance Superfund (established
2 pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through
3 Sections 106(b)(2), 111, 112, 113 of CERCLA, 42 U.S.C. §§
4 9606(b)(2), 9611, 9612, 9613, or any other provision of law; any
5 claim against any department, agency or instrumentality of the
6 United States under Sections 107 or 113 of CERCLA, 42 U.S.C. §§
7 9607 or 9613, or any subdivision of either tribe, related to the
8 Sites; or any claims arising out of response activities at the
9 Sites. Nothing in this Consent Decree shall be deemed to
10 constitute preauthorization of a claim within the meaning of
11 Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R.
12 § 300.700(d).

13 XV. PUBLIC COMMENT

14 44. This Consent Decree shall be subject to a thirty (30)
15 day public comment period from the date of notice in the Federal
16 Register. Plaintiffs, or any of them, may withdraw consent to
17 this Consent Decree if comments received disclose facts or
18 considerations which indicate that this Consent Decree is
19 inappropriate, improper, or otherwise inadequate. Settling
20 Defendants consent to the entry of this Consent Decree without
21 further notice.

22 XVI. DISPUTE RESOLUTION

23 45. Unless otherwise expressly provided in this Consent
24 Decree, the dispute resolution procedures of this Section shall
25 be the exclusive mechanism to resolve disputes arising under or

26 *U.S. Department of Justice*
27 *NOAA GC-DOJ DARC, BIN C15700*
7600 Sand Point Way NE
Seattle, WA 98115-0070
28 *(206) 526-6604*

1 with respect to all provisions of this Consent Decree; however,
2 this Section shall not apply to actions by Plaintiffs, or any of
3 them, to enforce obligations by Settling Defendants which have
4 not been disputed in accordance with this Section.

5 46. Any such dispute shall in the first instance be the
6 subject of informal negotiations between the parties to the
7 dispute. The period for informal negotiations shall not exceed
8 twenty (20) days from the time the dispute arises, unless it is
9 extended by agreement of the parties to the dispute. The dispute
10 shall be considered to have arisen when one party notifies the
11 other parties in writing that there is a dispute.

12 47. If the parties to the dispute cannot resolve the dispute
13 by informal negotiations, the position advanced by Plaintiffs, or
14 any of them, shall be considered binding unless, within ten (10)
15 days after the conclusion of the informal negotiation period, one
16 or more of the Settling Defendants ("Disputing Defendant(s)")
17 invoke the formal dispute resolution procedures of this Section
18 by serving a written statement of position on the matter in
19 dispute upon EPA, including, but not limited to, any data,
20 analysis or opinion supporting that position and any
21 documentation relied upon by the Disputing Defendant(s). Formal
22 dispute resolution shall be conducted pursuant to the procedures
23 set forth in the remainder of this Paragraph.

24 A. An administrative record of the dispute shall be
25 maintained by EPA and shall include all statements of position,

26 *U.S. Department of Justice*
27 *NOAA GC-DOJ DARC, BIN C15700*
7600 Sand Point Way NE
Seattle, WA 98115-0070
28 *(206) 526-6604*

1 including all supporting documentation submitted pursuant to this
2 Section.

3 B. After receipt of the statement of position submitted
4 by the Disputing Defendant(s) pursuant to this Paragraph, EPA
5 will serve its statement of position on the Disputing
6 Defendant(s), including, but not limited to, any data, analysis,
7 or opinion supporting that position and all supporting
8 documentation relied upon by EPA, in response to the statement of
9 position of the Disputing Defendant(s). EPA may, in its non-
10 reviewable discretion, allow submission of supplemental
11 statements of position by the parties to the dispute.

12 C. The EPA Region 10 Hazardous Waste Division Director
13 ("Director"), will issue a final administrative decision
14 resolving the dispute which shall be based on the administrative
15 record described in subparagraph "A" above, of this Paragraph.
16 This decision shall be binding upon the Disputing Defendant(s).

17 D. Any judicial review of the final administrative
18 decision of the Director shall be limited to whether the
19 Director's decision was arbitrary and capricious, or otherwise
20 not in accordance with law.

21 XVII. RETENTION OF JURISDICTION

22 48. This Court retains jurisdiction over both the subject
23 matter of this Consent Decree and Settling Defendants for the
24 effective period of this Consent Decree for the purpose of
25 enabling any of the Parties to apply to the Court at any time for

26 U.S. Department of Justice
27 NOAA GC-DOJ DARC, BIN C15700
28 7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6604

1 such further order, direction, and relief as may be necessary or
2 appropriate for the construction or modification of this Consent
3 Decree, or to effectuate or enforce compliance with this Consent
4 Decree, or to resolve disputes in accordance with this Consent
5 Decree.

6 XVIII. MODIFICATION

7 49. No material modification shall be made to this Consent
8 Decree without written notification to and written approval of
9 the Plaintiffs, Settling Defendants, and the Court. However, the
10 Environmental Trustee may modify Attachments "C" (Environmental
11 Trust) and "D" (Liquidation Plan) upon written approval by EPA.

12 50. Nothing in this Section shall be deemed to alter the
13 Court's power to supervise or modify this Consent Decree.

14 XIX. TERMINATION

15 51. This Consent Decree shall terminate upon certification
16 by Plaintiffs to this court that environmental response actions
17 and natural resource restoration at the Sites have been
18 completed, such that no further environmental cleanup or natural
19 resource restoration at or of either of the Sites is necessary.

20 52. If termination occurs following certification by
21 Plaintiffs, as set forth in the preceding Paragraph, Sections XI
22 (Covenants Not To Sue), XII (Reservation Of Rights), XIII (Effect
23 of Settlement/ Contribution Protection), and XIV (Covenants By
24 Settling Defendants) of this Decree shall survive such
25 termination. However, if this Decree is terminated for any

26 U.S. Department of Justice
27 NOAA GC-DOJ DARC, BIN C15700
28 7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6604

1 reason without such certification, those Sections, or portions
2 thereof, of this Consent Decree which this court finds it shall
3 be just, equitable and proper to survive termination hereof,
4 shall so survive.

5 XX. NOTICE TO STATE

6 53. Notice of negotiations of this Consent Decree with
7 Settling Defendants was given to the State of Washington through
8 its Department of Ecology ("Ecology"). A copy of this Consent
9 Decree has been provided to Ecology.

10 XXI. SIGNATORIES

11 54. Each Individual Settling Defendant to this Consent
12 Decree shall sign this Consent Decree for him/herself. The
13 undersigned representatives of PSR, the Environmental Trust, the
14 Assistant Attorney General for Environment and Natural Resources
15 of the Department of Justice of the United States, and the
16 Suquamish and Muckleshoot tribal representatives, each certifies
17 that he/she is fully authorized to enter into this Consent Decree
18 and to execute and legally bind the party he/she represents to
19 this Consent Decree.

20 55. Each Settling Defendant hereby agrees not to oppose
21 entry of this Consent Decree by this Court or to challenge any
22 provision of this Consent Decree unless Plaintiffs, or any of
23 them, notifies Settling Defendants in writing that it no longer
24 supports entry of this Consent Decree.

25 56. Each Settling Defendant shall identify, on the attached

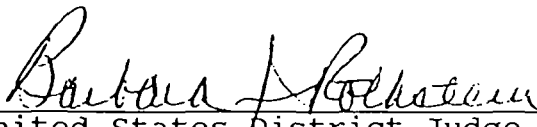
26 U.S. Department of Justice
27 NOAA GC-DOJ DARC, BIN C15700
28 7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6604

1 signature page, the name and address of an agent who is
2 authorized to accept notices hereunder and service of process by
3 mail on behalf of that Settling Defendant with respect to all
4 matters arising under or relating to this Consent Decree.
5 Settling Defendants hereby agree to accept service in that manner
6 and to waive the formal service requirements set forth in Rule 4
7 of the Federal Rules of Civil Procedure, including, but not
8 limited to, service of a summons, and any applicable local rules
9 of this Court.

10 XXII. EFFECTIVE DATE

11 57. The effective date of this Consent Decree shall be the
12 date of entry by this Court. Public comment shall be had as set
13 forth in Section XV of this Consent Decree.

14
15 SO ORDERED THIS 29th DAY OF August, 1994.

16
17 
18 United States District Judge

19
20
21
22
23
24
25
26 U.S. Department of Justice
27 NOAA GC-DOJ DARC, BIN C15700
28 7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6604

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the
2 matter of United States v. Pacific Sound Resources, Inc. et al.

3
4 FOR THE UNITED STATES OF AMERICA

5
6 Date: 4/19/84

Lois J. Schiffer
7 LOIS J. SCHIFFER
8 Acting Assistant Attorney General
9 Environment and Natural Resources
10 Division
11 U.S. Department of Justice
12 Washington, D.C. 20530

13
14 Date: _____

15
16
17 GERALD A. EMISON
18 Acting Regional Administrator,
19 Region 10
20 U.S. Environmental Protection Agency
21 1200 Sixth Avenue
22 Seattle, WA 98101

23
24 FOR NATIVE AMERICAN NATURAL RESOURCE TRUSTEES

25
26 Date: _____

27
28 The Suquamish Tribe

29
30 Date: _____

31
32 The Muckleshoot Indian Tribe

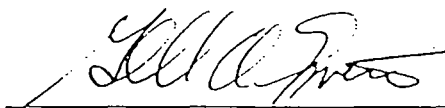
1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the
2 matter of United States v. Pacific Sound Resources, Inc. et al.

3
4 FOR THE UNITED STATES OF AMERICA

5
6 Date: _____

7 LOIS J. SCHIFFER
8 Acting Assistant Attorney General
9 Environment and Natural Resources
10 Division
11 U.S. Department of Justice
12 Washington, D.C. 20530

13
14 Date: 9-30-83

15 
16 GERALD A. EMISON
17 Acting Regional Administrator,
18 Region 10
19 U.S. Environmental Protection Agency
20 1200 Sixth Avenue
21 Seattle, WA 98101

22
23 FOR NATIVE AMERICAN NATURAL RESOURCE TRUSTEES

24
25 Date: _____

26 The Suquamish Tribe

27
28 Date: _____

The Muckleshoot Indian Tribe

1 FOR THE UNITED STATES OF AMERICA

2
3 Date: 4/28/99

4 Steven A. Herman
5 STEVEN A. HERMAN
6 Assistant Administrator for
7 Enforcement
8 U.S. Environmental Protection Agency
9 401 M Street, S.W. (mailcode 2211)
10 Washington, D.C. 20460
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

28 CONSENT DECREE - 36A


1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the
2 matter of United States v. Pacific Sound Resources, Inc. et al.

3 FOR THE UNITED STATES OF AMERICA
4
5

6 Date: _____

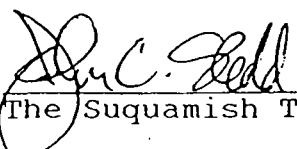
7 LOIS J. SCHIFFER
8 Acting Assistant Attorney General
9 Environment and Natural Resources
10 Division
11 U.S. Department of Justice
12 Washington, D.C. 20530

13 Date: 9-30-83

14 
15 GERALD A. EMISON
16 Acting Regional Administrator,
17 Region 10
18 U.S. Environmental Protection Agency
19 1200 Sixth Avenue
20 Seattle, WA 98101

21 FOR NATIVE AMERICAN NATURAL RESOURCE TRUSTEES
22

23 Date: 4/13/94

24  TRIBAL ATTORNEY
25 The Suquamish Tribe

26 Date: _____

27 The Muckleshoot Indian Tribe
28

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the
2 matter of United States v. Pacific Sound Resources, Inc. et al.

3 FOR THE UNITED STATES OF AMERICA

4
5
6 Date: _____

7 LOIS J. SCHIFFER
8 Acting Assistant Attorney General
9 Environment and Natural Resources
10 Division
11 U.S. Department of Justice
12 Washington, D.C. 20530

13
14
15 Date: _____

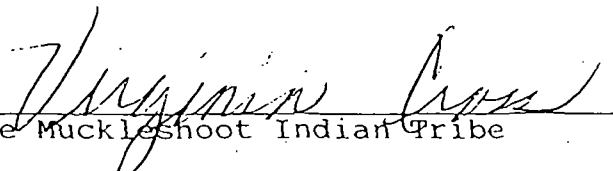
16 GERALD A. EMISON
17 Acting Regional Administrator,
18 Region 10
19 U.S. Environmental Protection Agency
20 1200 Sixth Avenue
21 Seattle, WA 98101

22 FOR NATIVE AMERICAN NATURAL RESOURCE TRUSTEES

23
24
25 Date: _____

26 The Suquamish Tribe

27 Date: 4-14-94

28 
The Muckleshoot Indian Tribe

FOR PACIFIC SOUND RESOURCES, INC.:

Date: September 29, 1993

Ted G. DePriest

TED G. DePRIEST, President and CEO
Pacific Sound Resources, Inc.
2801 S.W. Florida Street
Seattle, WA 98126

FOR PACIFIC SOUND RESOURCES ENVIRONMENTAL TRUST:

Date: 9/30/93

Al Lowe

AL LOWE, Trustee ~~NOMINEE~~
Pacific Sound Resources
Environmental Trust

INDIVIDUAL SETTLING DEFENDANTS:

Date: September 25, 1993

Susan Wyckoff Mullen
SUSAN WYCKOFF MULLEN

Date: September 29, 1993

Charles S. Mullen
CHARLES S. MULLEN

Date: September 29, 1993

Dr. Tom L. Wyckoff
DR. TOM L. WYCKOFF

Date: September 29, 1993

Margo G. Wyckoff
MARGO G. WYCKOFF

Date: September 29, 1993

Ted G. DePriest
TED G. DePRIEST

Date: September 29, 1993

Karin DePriest
KARIN DePRIEST

1 Agent Authorized to Accept Service on Behalf of All Settling
2 Defendants:

3 Ralph H. Palumbo, Esq.
4 Heller, Ehrmann, White & MacAuliffe
5 6100 Columbia Seafirst Center
6 701 Fifth Avenue
7 Seattle, WA 98104
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF AGREEMENT
CONCERNING
WYCKOFF/EAGLE HARBOR SUPERFUND SITE
AND
WYCKOFF COMPANY, WEST SEATTLE WOOD TREATING FACILITY

This Memorandum of Agreement (MOA) is entered into between the United States Environmental Protection Agency (EPA), the Department of the Interior (DOI), the National Oceanic and Atmospheric Administration (NOAA), the Muckleshoot Tribe and the Suquamish Tribe. DOI, NOAA, and the Tribes are collectively referred to as the "Trustees".

I. BACKGROUND

Pacific Sound Resources (PSR), formerly the Wyckoff Company, owns two Puget Sound sites which are contaminated with hazardous substances; the Wyckoff Facility operable unit of the Wyckoff/Eagle Harbor Superfund Site (Eagle Harbor), which is on the Superfund National Priorities List (NPL), and the Wyckoff West Seattle Wood Treating Facility (West Seattle), which is in the process of being listed on the NPL (Sites).

The founder and principal shareholder of PSR was Walter Wyckoff. Upon (b) (6) in 1980, his shares were held by his wife. Upon (b) (6) in 1989, the shares were (b) (6) (b) (6), Tom L. Wyckoff and Susan Wyckoff Muller, the current owners of PSR.

These owners want to enter into a consent decree with EPA

and the Trustees to resolve their environmental liability, including liability for natural resource damages, related to the release of hazardous substances at and from the Sites.

In exchange for personal covenants not to sue for themselves, their spouses and marital communities, and for current PSR President, Ted DePriest, the owners propose that all PSR assets, including non-wood treating real property, be liquidated and the proceeds therefrom be given to the United States.

II. PURPOSE AND GOALS

This MOA is intended to provide a cooperative framework and mechanism for the sharing of the liquidation proceeds derived from the proposed PSR liquidation and settlement to best ensure that EPA and the Trustees accomplish their overarching goals for the Sites: remediation to protect human health and the environment, and restoration of natural resources.

The primary goal of the parties is to accomplish remediation of the Sites in a manner which also addresses the restoration of injured natural resources. The Trustees seek to ensure that the selection and design of remedial actions for the Sites by EPA will achieve this goal. EPA intends to perform response activities at the Sites with funds from the Hazardous Waste Superfund. EPA seeks to select response actions which are consistent with the restoration goals of the Trustees, and will consult with the Trustees in its response action study and

selection processes.

III. EPA FUNDING OF TRUSTEE PARTICIPATION

In order to facilitate the Trustee's participation in the design and implementation of remediation for the Sites, EPA will provide funding to the Trustees for a 1/2 time employee, beginning three months after the consent decree is approved by the court, and continuing until final disbursement of the recovered funds as contemplated in paragraph IV below. The structure for this position will be established by the Trustees at a later date, and EPA will be informed of where funding should be directed for this purpose. The minimum funding for this position will be \$35,000 for the first year, with yearly increases of 5% plus an inflation allowance in the amount of the Consumer Price Index published by the federal government.

IV. DIVISION OF RECOVERED FUNDS

Prior to the selection of final response actions for the Sites, all PSR assets except the Sites will be liquidated in a manner intended to maximize recovery for EPA and the Trustees. Proceeds from this liquidation shall be divided among the parties as follows: 50% to EPA as Superfund response cost recovery, and 50% or \$1.5 million dollars, whichever is greater, to be deposited, as interest bearing bonds, into the registry of the United States District Court for Western District of Washington,

pending the selection of final remedial action for each site. Funding for the 1/2 time position described above will not come from the money deposited in the registry of the District Court.

If after selection of the final remedial action for each site, the Trustees, by written concurrence by each of them, certify that the selected remedial action is consistent with restoration goals formally presented by the Trustees during the public comment period for EPA's proposed plans, the funds in the court registry will be released to EPA. If the Trustees do not certify that the final remedial action for each site is consistent with restoration goals, and the parties cannot informally agree to a division of the funds in the court registry, the fund shall be divided among the parties as follows:

An independent decision maker shall award the proceeds to EPA if the final remedial action for each site is consistent with restoration goals, or shall award the proceeds to the Trustees if the final remedial action for each site is not consistent with restoration goals. The parties anticipate that a mutually satisfactory resolution of the division of these funds without an independent decision maker will eventuate. They therefore have agreed to defer selection of the independent decision maker until a need for an independent decision arises as set forth in this MOA. However, in making his/her determination, the independent decision maker shall presume that the Trustees acted in good faith in determining whether the final remedial actions were consistent with restoration goals, and EPA will have the burden

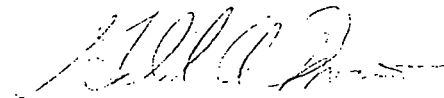
of establishing that selected remedial actions are consistent with trustee restoration goals.

V. MISCELLANEOUS PROVISIONS

- A. Effective Date: Amendment and Termination. This agreement shall be effective when executed by all of the Trustees and a consent decree for the Sites has been approved in Federal Court, and may not be amended except by written agreement of all Trustees. This agreement shall continue in effect until terminated by agreement of all the Trustees.
- B. Commitment of Resources. Nothing in the Agreement shall be construed as obligating the United States, the Tribes or the State, their officers, agents or employees, to expend any funds in excess of appropriations authorized by law.
- C. Reservation of Rights. It is recognized that each Party of this agreement has and reserves all rights, powers and remedies now or hereafter existing at law or in equity, or by statute or otherwise, except as specifically agreed herein, and that nothing in this Agreement waives or forecloses the exercise of any such rights, powers or remedies.
- D. No Member or Delegate to Congress shall be admitted to any share or part of this Agreement, or to any benefit that may arise from this Agreement.

The United States Environmental Protection Agency hereby approves the Memorandum of Agreement concerning the Wyckoff/Eagle Harbor Superfund Site and Wyckoff Company, West Seattle Wood Treating Facility.

DATED: February 28, 1994

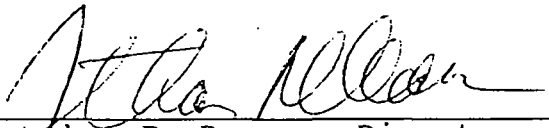


Gerald A. Emison
Acting Regional Administrator

The United States Department of the Interior hereby approves the Memorandum of Agreement concerning Wyckoff/Eagle Harbor Superfund Site and Wyckoff Company, West Seattle Wood Treating Facility.

DATED:

9/30/93



Jonathan P. Deason, Director
Office of Environmental Affairs
Department of the Interior

The National Oceanic and Atmospheric Administration hereby approves the Memorandum Of Agreement Concerning Wyckoff/Eagle Harbor Superfund Site And Wyckoff Company, West Seattle Wood Treating Facility.

C. Ehler

4/18/74
Date

The Muckleshoot Indian Tribe hereby approves the Memorandum of Agreement concerning the Wyckoff/Eagle Harbor Superfund Site and Wyckoff Company, West Seattle Wood Treating Facility

DATED: MARCH 2, 1994

Virginia Cross

The Suquamish Indian Tribe hereby approves the Memorandum Of Agreement Concerning Wyckoff/Eagle Harbor Superfund Site And Wyckoff Company, West Seattle Wood Treating Facility.

Lyle Emerson George

10/19/93
Date

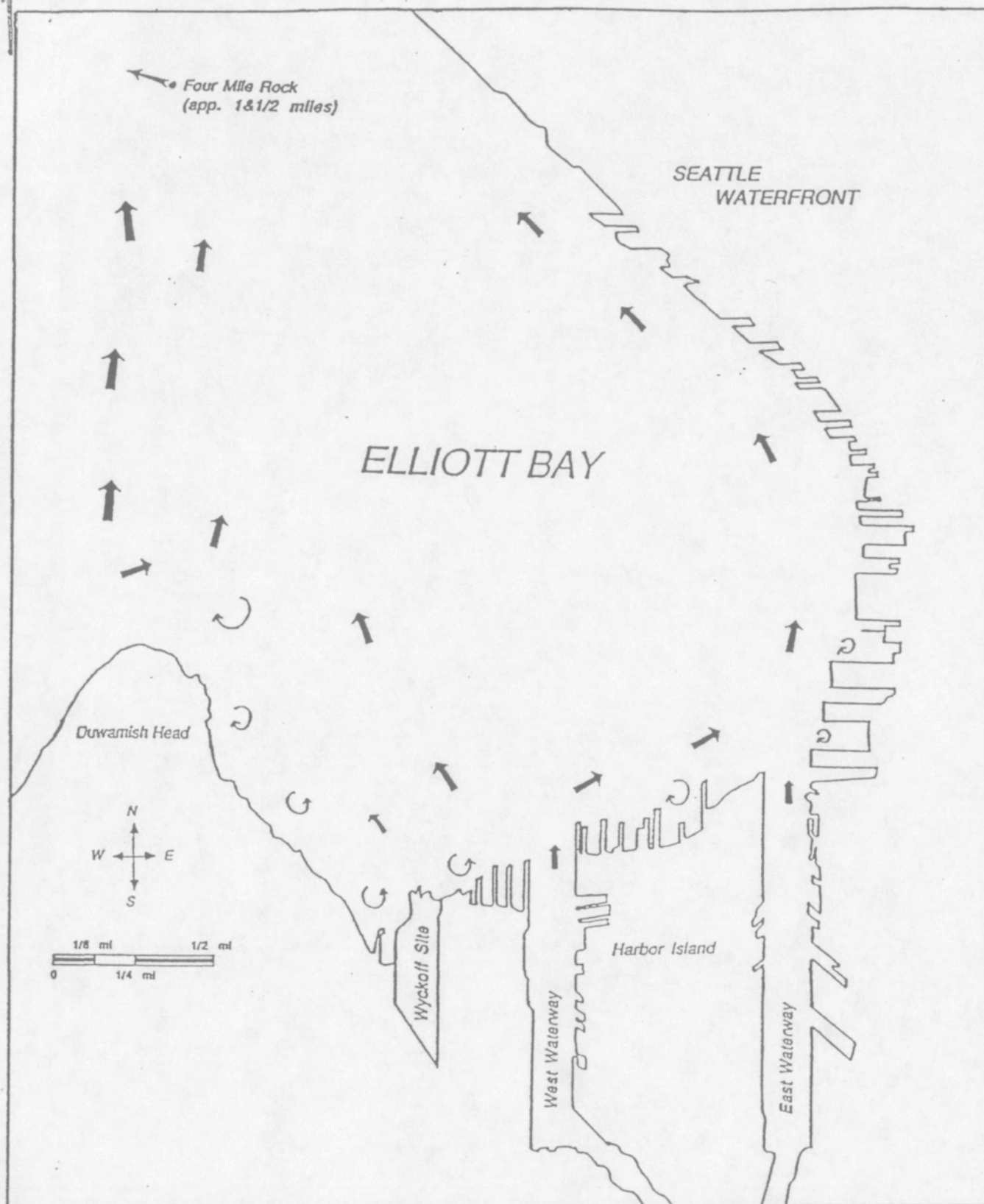


Figure 8. Approximate shoreline flow pattern: Ebb condition

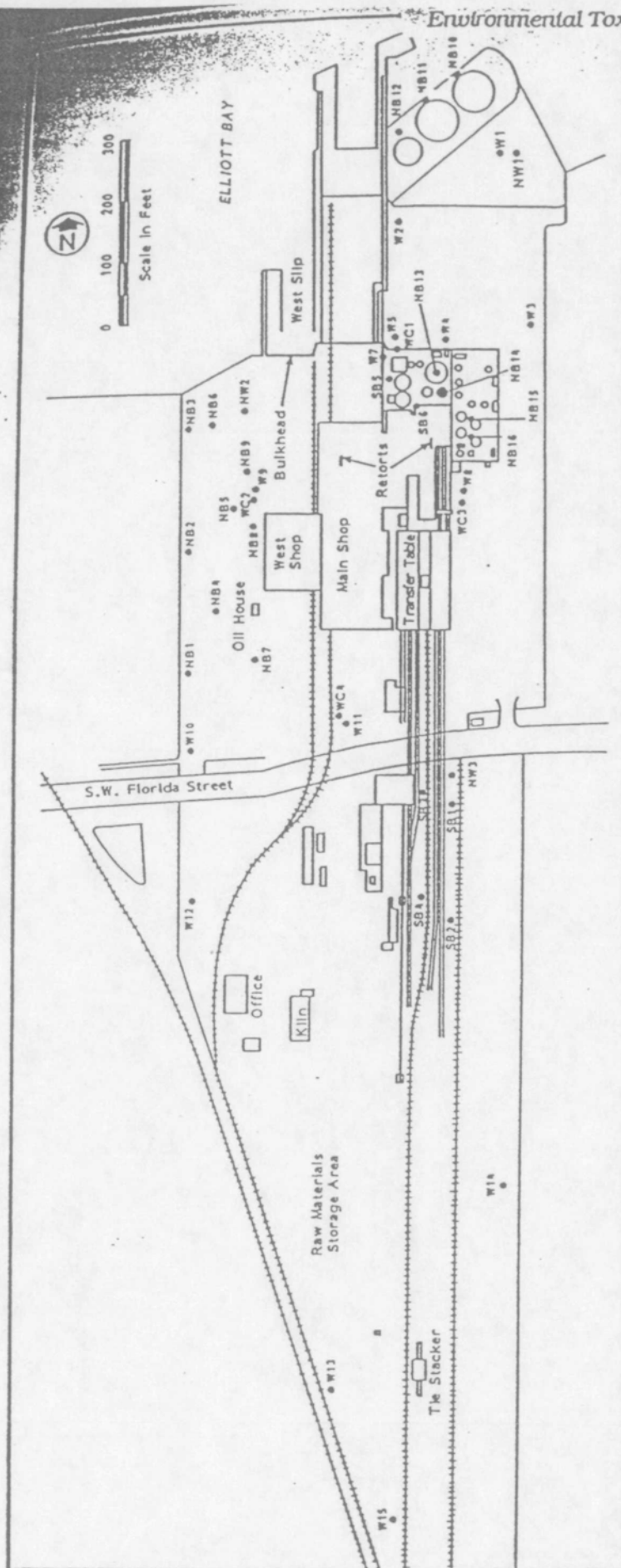


Figure 2. Location of soil borings and wells (source: SAIC, 1989)

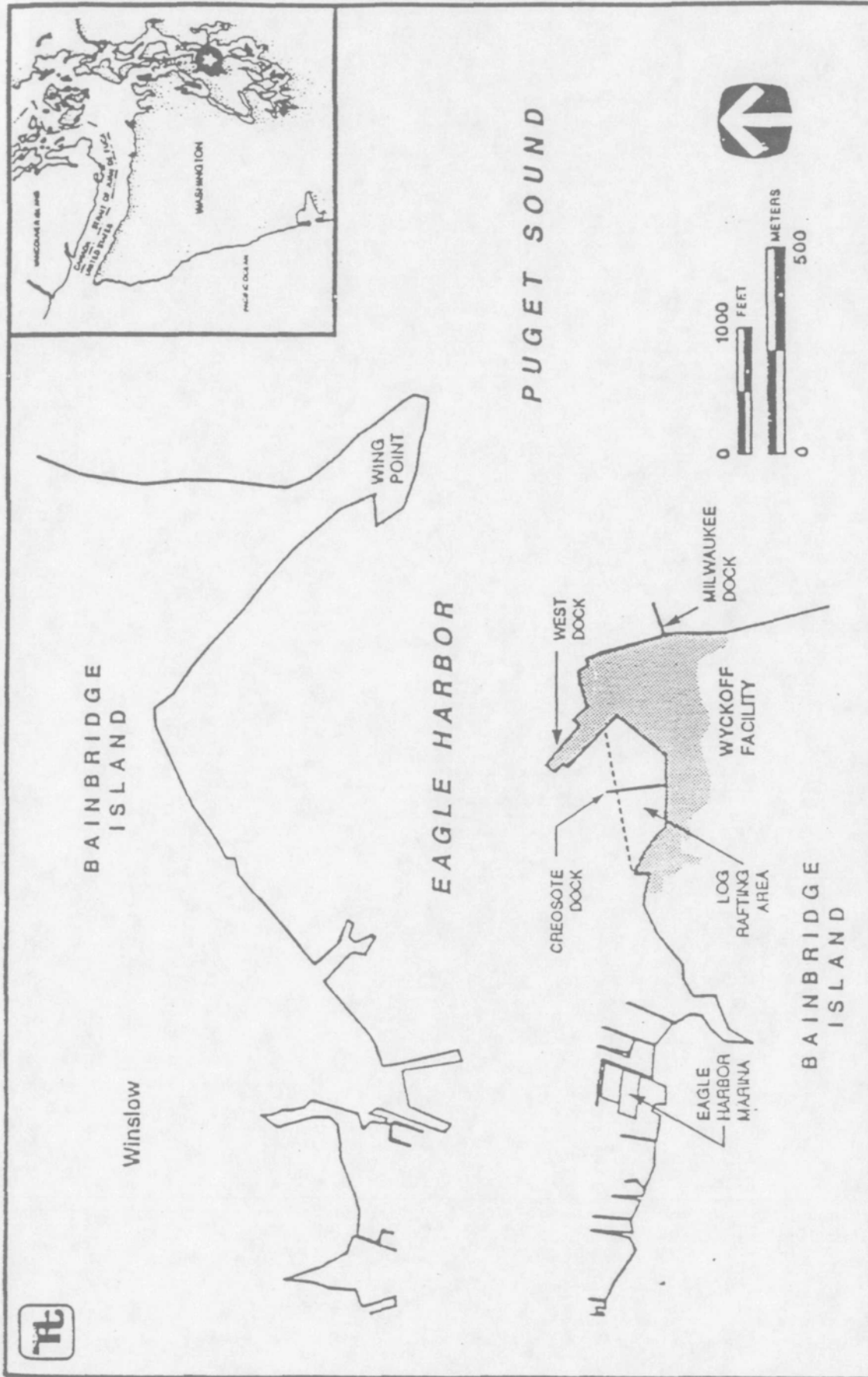


Figure 1. Location map of the Wyckoff Company facility on Bainbridge Island.

PACIFIC SOUND RESOURCES ENVIRONMENTAL TRUST

AGREEMENT made this 29th day of September, 1993 between Pacific Sound Resources, Inc. ("PSR"), Tom Wyckoff, Margo G. Wyckoff, Susan Wyckoff Mullen, Charles S. Mullen, Ted DePriest and Karen DePriest, to implement the Consent Decree, to which it is an attachment.

FIRST: Name and Definitions

1.01 "CONSENT DECREE" means the Consent Decree (and all attachments thereto) entered in United States v. Pacific Sound Resources, Inc. et al., Civ. No. (W.D. Wash. 1993).

1.02 "COURT" means the United States District Court for the Western District of Washington.

1.03 "ENVIRONMENTAL TRUST" means this Pacific Sound Environmental Trust.

1.04 "INDIVIDUAL PARTIES" means Tom L. Wyckoff and Margo G. Wyckoff, and (b)(6), Susan Wyckoff Mullen and Charles S. Mullen, and (b)(6), and Ted DePriest and Karen DePriest, and (b)(6).

1.05 "PSR" refers to PACIFIC SOUND RESOURCES, INC., and its predecessor company, Wyckoff Company.

1.06 "SITES" refers to PSR's West Seattle and Eagle Harbor woodtreating plant sites, including the areal extent of contamination at or from each Site and areas in very close proximity thereto necessary for the implementation of response activities.

1.07 "TRUSTEE" means the Trustee of the Pacific Sound Resources Environmental Trust.

1.08 "UNITED STATES" refers to the federal government agencies that are signatories to the Consent Decree.

SECOND: Statement of Purposes

2.01 PURPOSES. The purposes of this Environmental Trust are to manage the cessation of woodtreating operations at PSR's West Seattle woodtreating facility; the liquidation of all PSR assets; the payment of the proceeds from the liquidation of all PSR assets to PSR's creditors and, to the maximum extent possible under the circumstances, to the United States Hazardous Substance Superfund and the registry of the Court as set forth in the Consent Decree; the orderly transfer of responsibility for the implementation of environmental response actions at the Sites from PSR to EPA contractors or designees.

THIRD: Beneficiaries

3.01 BENEFICIARIES. The United States, the Suquamish Tribe, and the Muckleshoot Indian Tribe are the beneficiaries of this Environmental Trust. The beneficiaries shall not be considered to be owners or operators of PSR or the Sites.

FOURTH: Appointment and Replacement of Trustee

4.01 APPOINTMENT OF TRUSTEE. The initial Trustee of the Trust shall be nominated by the United States and approved by the Court.

4.02 COMPENSATION OF THE TRUSTEE. The Trustee shall be compensated in such amounts as are approved by the United States from time to time.

4.03 REPLACEMENT OF THE TRUSTEE. The Court shall have the power to appoint a replacement Trustee if the office of the Trustee becomes vacant.

4.04 REMOVAL OF TRUSTEE. The Court shall have the power to remove the Trustee if at any time it determines that the Trustee is not performing his or her duties in a manner that is consistent with the purposes of this Environmental Trust and the Consent Decree. The United States shall have the right to ask the Court to remove the Trustee.

FIFTH: Trustee's Duties

5.01 VOTE COMPANY STOCK. The Trustee shall have the duty and the authority to vote all PSR capital stock in the Environmental Trust. The Trustee shall exercise this power in accordance with the provisions and purposes of this Environmental Trust and the Consent Decree. Further the Trustee shall oversee the liquidation of all PSR assets and the payment of the proceeds of the liquidation in accordance with the provisions of this Environmental Trust and the Consent Decree. The Trustee may serve as the sole member of PSR's Board of Directors and may serve as PSR's chief executive officer.

5.02 APPROVAL OF PLAN OF DISSOLUTION. The Trustee shall approve the proposal to dissolve PSR in accordance with Chapter 23B.14 of the Revised Code of Washington and Section VII of the Consent Decree.

5.03 CONSULTATION WITH EPA. The Trustee shall make all reasonable efforts to consult with the United States on material matters related to the liquidation of PSR assets, the payment of the proceeds of the liquidation in accordance with this Environmental Trust and the Consent Decree, the transfer of responsibility for remediation of the Sites from PSR and EPA, and other material matters prior to exercising any power granted to the Trustee by this Environmental Trust.

5.04 DESIGNATION BY THE UNITED STATES. For purposes of making decisions or rendering advice to the Trustee that is necessary to the proper administration of this Environmental Trust, the United States agrees to designate, in a writing delivered to the Trustee, a person or persons authorized to act for the United States.

5.05 POWERS GRANTED BY STATE LAW. In addition to the powers expressly granted to the Trustee by this Environmental Trust, the Trustee shall have all other powers granted to Trustees under the laws of the State of Washington.

SIXTH: Amendment

6.01 AMENDMENT. The Court shall have the power to amend this Environmental Trust as necessary to effect purposes of this Trust and the Consent Decree.

SEVENTH: PSR Capital Stock

7.01 TRANSFER OF PSR STOCK TO THE ENVIRONMENTAL TRUST. Upon entry of the Consent Decree by the Court, Susan Wyckoff Mullen and Tom and Margo Wyckoff shall cause all of the issued and outstanding capital stock of PSR to be transferred and delivered to the Trustee in accordance with the Trust.

7.02 WARRANTY AND REPRESENTATION. The Individual Parties represent and warrant to the United States that the capital stock delivered and transferred to the Trustee pursuant to Paragraph 6.01 hereof constitutes all of the Individual Parties' shares, ownership rights and interests in PSR, except as expressly set forth in Paragraph 6.03 hereof.

7.03 ATTORNEY-CLIENT PRIVILEGE AND WORK PRODUCT DOCTRINE. The United States agrees that the transfer of capital stock to the Environmental Trust by the Individual Parties does not transfer any rights of the Individual Parties or PSR to, or constitute a waiver of, the attorney-client privilege and the work product doctrine. Accordingly, (a) all communications between PSR and its legal counsel (b) all communications between any Individual Party and his or her legal counsel, and (c) all work product of legal counsel for PSR and the Individual Parties that were protected from disclosure to third parties prior to the date of the transfer of capital stock to the Environmental Trust shall continue to be covered by the attorney-client privilege and/or the work product doctrine. Attorney-client communications between PSR and its legal counsel and work product of PSR's legal counsel may be waived only with the unanimous permission of all Individual Parties.

EIGHTH: Formation of the Environmental Trust

8.01 CONDITIONS PRECEDENT. Conditions precedent to the formation of this Environmental Trust shall be the transfer and delivery of all outstanding capital stock of PSR to the Trustee,

the appointment of the initial Trustee by the Court, and the entry of the Consent Decree by the Court.

8.02 EFFECTIVE DATE. This Environmental Trust shall become effective as of the date on which all conditions precedent set forth in paragraph 7.01 hereof are fulfilled.

NINTH: Trust Termination

9.01 TERMINATION DATE. This Environmental Trust shall terminate upon completion of the dissolution of PSR in accordance with Chapter 23B.14 of the Revised Code of Washington and the Consent Decree.

LIQUIDATION PLAN

The liquidation of all PSR assets, including real property, inventories, wood treating equipment, furniture, vehicles and other rolling stock, office and laboratory equipment, proprietary technologies, accounts receivable, notes receivable, securities, and other tangible and intangible assets, shall be managed by the Trustee (the "Trustee") of the PSR Environmental Trust (the "Environmental Trust") and the President of Pacific Sound Resources, Inc. ("PSR President") in accordance with this Liquidation Plan.

1. Duties of the Trustee.

The duties of the Trustee are to:

- a) Provide oversight and direction to the PSR President with respect to all material transactions related to the liquidation of PSR assets;
- b) Approve the operating budget for the Environmental Trust and PSR;
- c) Approve all payments and other distributions made to creditors of PSR, the United States and the registry of the Court;

- d) Obtain EPA's approval of all sales of real property, and;
- e) Consult with EPA on such other matters as the Trustee deems material to the proper performance of his or her duties under the Consent Decree and the Environmental Trust.

2. Duties of the PSR President.

The duties of the PSR President are to:

- a) Manage the day-to-day performance of the Liquidation Plan;
- b) Keep the Trustee advised with respect to the material transactions related to the liquidation of PSR assets;
- c) Prepare operating budgets for the Environmental Trust and PSR and obtain the Trustee's approval of such budgets;
- d) Obtain the Trustee's written approval of all material transactions, and;
- e) Consult with the Trustee on such other matters as the PSR President deems material to proper performance of his or her duties under the Consent Decree, the Environmental Trust, and the Employment Agreement between the PSR

President, as employee, and PSR and the Environmental Trust, collectively, as employer ("Employment Agreement").

3. Material Transactions.

For the purposes of this Liquidation Plan, a material transaction is any transaction that involves the payment by PSR or the Environmental Trust of an amount greater than \$1,000, or the sale or distribution of an asset of PSR that has a value of greater than \$1,000.

4. Liquidation Factors.

The Trustee and the PSR President will manage the liquidation of all PSR assets in a reasonable and timely manner taking into account that it may be impossible or impractical to sell or otherwise liquidate certain of PSR's assets, or the purchase price for such saleable assets may be adversely affected, because:

- a) PSR equipment and other personal property may be contaminated with hazardous substances;
- b) Concerns about environmental liabilities or other liabilities associated with PSR may limit potential purchases of PSR assets;

- c) Remedial investigations, feasibility studies and/or response and remedial actions being performed at PSR's woodtreating plant sites may limit potential purchasers' ability to redevelop or otherwise use the sites or remove, decontaminate or tear down the plants and associated equipment, inventories and personal property;
- d) Requirements that equipment, inventories and personal property located at PSR's woodtreating sites be disposed of in a short time period in order to make the Site available for remediation and redevelopment may limit the ability to sell assets or the purchase price obtained for equipment, inventory and personal property.

5. Operating Budgets.

- a) The PSR President shall prepare, and submit to the Trustee for approval, quarterly operating budgets for the Environmental Trust and PSR. Such budgets will include all reasonably foreseeable expenses that will be incurred by the Environmental Trust and PSR to manage the liquidation of all PSR assets ("Necessary Expenses"). In the event the PSR President determines during any quarter that it will be necessary for the Environmental Trust or PSR to incur Necessary Expenses that exceed the applicable operating budget for that quarter by more than ten percent (10%), the PSR President will revise the

operating budget and submit it to the Trustee for approval.

- b) The Trustee shall approve the Environmental Trust's and PSR's quarterly operating budgets, and any revisions thereto, in writing. In the event that an operating budget for the Environmental Trust or PSR includes expenditures totalling in excess of \$5,000 in any one week (other than compensation of the PSR President pursuant to the terms of the Employment Agreement) or purchases of assets in excess of \$5,000 in any one week, the Trustee will obtain EPA's written approval of such budget.
- c) The Environmental Trust and PSR shall limit Necessary Expenses to those expenses included in an approved operating budget, or revision thereto.

6. Permitted Transactions.

In order to effect the reasonable and timely liquidation of all PSR assets, the Trustee and the PSR President may:

- a) Enter into contracts for the sale of PSR assets, or extend contracts to sell PSR assets, provided such contracts are entered into in accordance with the terms of this Liquidation Plan;

- b) Obtain loans or incur or permit liens with respect to PSR real property or other assets as may be necessary to effect the payment of Necessary Expenses and the liquidation of PSR assets;
- c) Make payments to the PSR President in accordance with the terms of the Employment Agreement;
- d) Sell PSR assets or services, provided such sales are made in accordance with this Liquidation Plan; and
- e) Accept orders for woodtreating goods or services for the purposes of liquidating the Company's inventory and winding up the Company's woodtreating business provided no treating of wood products will occur at the PSR sites.
- f) Pay any and all expenses of PSR and the Environmental Trust incidental and reasonably necessary to the fulfillment of this Liquidation Plan, the Employment Agreement and the Consent Decree of which they are a part.
- g) Retain legal counsel to assist in the collection of accounts receivable or any other appropriate reason consistent with the objectives and goals of this Liquidation Plan and the Consent Decree of which it is a part. The Trustee shall select such legal counsel.

All such contracts, loans, liens, payments, sales and orders, as provided for in a) through f) above, are expressly authorized so long as they are consistent with the expeditious windup and closing of the business of PSR, the liquidation of all of PSR's assets and payment of PSR's creditors, and are otherwise consistent with this Liquidation Plan and the goals and objectives of the Consent Decree of which this Liquidation Plan is a part.

7. Liquidation of Woodtreating Sites.

- a) The parties to the Consent Decree of which this Liquidation Plan is a part contemplate that the real estate upon which PSR operates a woodtreating plant at West Seattle will be acquired by the Port of Seattle pursuant to the terms of an Option Agreement to be negotiated between PSR and the Port. The parties further contemplate that the aforesaid Option Agreement between PSR and the Port will contain, as conditions precedent to closing, the requirement that the Port be granted a new owner's covenant by the United States and the entry of the Consent Decree of which this Liquidation Plan is a part and which contains covenants not to be sued by the United States in favor of the Individual Settling Defendants and protection from claims of contribution by third parties. Based upon the foregoing understandings, the West Seattle woodtreating real estate site will be acquired by the Port of Seattle pursuant to the terms of

the Option Agreement, and the Trustee and the PSR President will do all things reasonably necessary to effectuate the closing of such purchase and sale.

- b) The Eagle Harbor woodtreating plant site may not be saleable until completion of response and remedial actions by EPA. The Trustee and the PSR President will consider alternatives for the sale of the Eagle Harbor plant site, including the potential to segregate and sell portions of the real property that have not been contaminated by woodtreating operations.
- c) At such time as the Trustee determines that the Eagle Harbor woodtreating plant site (or a portion thereof) is saleable, he will market the property under the Real Estate Marketing Plan set forth at Paragraph 8 below.

8. Real Property Marketing Plan.

- a) All real property owned by PSR will be listed for sale with a commercial real estate broker or other real estate professional. Non-woodtreating real property will be listed following entry of the Consent Decree. The Eagle Harbor plant site, or portions thereof, will be listed at such time or times as the Trustee determines that the real property is marketable.

- b) The Trustee may elect to have certain or all the real property appraised by a MAI appraiser or other real estate professional.

- c) The Trustee shall have the discretion to set the terms upon which real property shall be offered for sale. To the extent practicable, payments terms shall be in cash or cash equivalents. In the event the Trustee determines that it is necessary or prudent to sell real property on an installment basis, the Trustee shall make reasonable efforts to limit the duration of the installment term and to document such installment sale so that the note and mortgage or deed of trust or contract is marketable. The Trustee shall cause the sale of all of the parcels of real estate owned by PSR on terms and conditions providing for conveyance by special warranty deed in form customarily in use in commercial transactions in the State of Washington or, in the alternative, "as is and where is" only.

9. Liquidation of Inventories.

- a) The Trustee, by directive to the PSR President, shall cause the sale of PSR's inventories in the normal course or by other commercially reasonable means.
- b) In the event that the Trustee is unable to liquidate the entire inventory of treated wood products located at the West Seattle Site in a timely manner, the Trustee may elect to dispose of such inventories in accordance with State and federal hazardous waste laws.

10. Liquidation of Plant and Equipment.

- a) The Trustee, by directive to the PSR President, shall cause PSR to make reasonable efforts to sell all PSR's equipment, treating chemicals, furniture, vehicles, rolling stock and other personal property ("Plant and Equipment"). In connection with the sale of the Plant and Equipment, the Trustee may consign certain Plant and Equipment to brokers or other agents, offer all or certain of the Plant and Equipment at auction, and use other commercially reasonable means.
- b) In the event that the Trustee is unable to sell certain of PSR's Plant and Equipment, or if the Trustee determines that the cost of making certain of the Plant

and Equipment suitable for sale is approximately equal to or greater than the anticipated value of such Plant and Equipment, the Trustee may dispose of the such Plant and Equipment in compliance with State and federal hazardous waste laws.

11. Liquidation of Intangibles.

Certain of PSR's good will, trade and business secrets, customer information, proprietary technology, and other general intangibles do not have any value to persons other than the PSR President and/or other former employees of PSR. Accordingly, the Trustee may elect to sell or otherwise dispose of PSR's intangibles for nominal consideration or without consideration. In addition, the Trustee and the PSR President are specifically authorized to transfer all right, title and interest in and to the Submerged Media Biofilter and the biological organisms utilized in the system which have been developed and are owned by PSR to the PSR President as part of his compensation under the Employment Agreement.

12. Insurance and Other Claims.

The Company has asserted various claims against its insurance carriers for damages under its insurance contracts. The Trustee shall make a timely evaluation of the claims. In the event the Trustee determines that the claims are of negligible or minimal value or that the Trust and the United States are

unable or unwilling to pursue the claims, the Trustee may dispose of the claims in his discretion to anyone including the Individual Settling Defendants.

13. Amendment of the Liquidation Plan.

The Trustee may amend this Liquidation Plan with EPA's written approval.

14. Use of Proceeds.

- a) Proceeds from the liquidation of PSR's assets shall be used first to pay the Necessary Expenses of the Environmental Trust and PSR, except to the extent that PSR's secured creditors have a prior claim to such proceeds.
- b) After payment of Necessary Expenses, proceeds from the sale of PSR's assets shall be used to pay creditors of PSR.
- c) After payment of Necessary Expenses and PSR's creditors, all remaining proceeds from the liquidation of PSR's assets shall be paid as follows: One-half into the United States Hazardous Substance Superfund Trust and the other one-half into the Registry of the Court, in the manner provided in Section IX of the Consent Decree.

Payments due to the Fund and the Registry of the Court shall be made within 10 days of the end of any month during which proceeds from the liquidation of PSR' assets are received; provided, however, that if the aggregate proceeds payable under this subparagraph (c) are less than \$1,000, the funds may be held in an interest bearing account until the aggregate proceeds are equal to or greater than \$1,000.

15. Completion of Liquidation.

At such time as the Liquidation Plan is fulfilled such that all assets of PSR have been sold or otherwise disposed of and the proceeds of sale or disposal have been paid according to this Liquidation Plan, the Trustee shall file such notifications of completion of liquidation of PSR as are required by Washington State law and terminate the Environmental Trust according to its terms.

PACIFIC SOUND RESOURCES, INC.

Balance Sheet

JUNE, 1993

PART I

Assets	1993	1992	INCREASE (DECREASE)
Current Assets	<u>1,698,210</u>	<u>2,579,587</u>	< 881,377 >
Non-Current Assets	<u>14,400,997</u>	<u>12,454,181</u>	<u>1,946,816</u>
Total Assets	<u>16,099,207</u>	<u>15,033,768</u>	<u>1,065,439</u>
Liabilities & Capital			
Current Liabilities	<u>6,719,879</u>	<u>4,124,970</u>	<u>2,594,909</u>
Non-Current Liabilities	<u>1,912,216</u>	<u>5,164,454</u>	< 3,252,238 >
Total Liabilities	<u>8,632,095</u>	<u>9,289,424</u>	< 657,329 >
Capital Stock	<u>2,700,000</u>	<u>2,700,000</u>	—
Retained Earning 1/1	<u>3,239,863</u>	<u>1,888,941</u>	<u>1,350,922</u>
Net Income After Taxes-YTD	<u>1,527,249</u>	<u>1,155,403</u>	<u>371,846</u>
Dividends Declared-YTD			
Total Capital	<u>7,467,112</u>	<u>5,744,344</u>	<u>1,722,768</u>
Total Liabilities & Capital	<u>16,099,207</u>	<u>15,033,768</u>	<u>1,065,439</u>
Current Ratio	<u>.25</u>	<u>.62</u>	< .37 >
Working Capital	< <u>5,021,669</u> >	< <u>1,545,383</u> >	< <u>3,476,286</u> >
Longterm Notes-% of Capital	<u>-0-</u>	<u>82%</u>	< <u>82%</u> >

PART II

Statement of Income & Expenses

YTD 1992	YTD 1993	MONTH 1993	MONTH 1992
<u>4,084,103</u>	<u>4,071,911</u>	<u>728,083</u>	<u>682,838</u>
<u>3,606,011</u>	<u>3,930,292</u>	<u>800,201</u>	<u>560,201</u>
<u>478,092</u>	<u>141,619</u>	< <u>72,118</u> >	<u>122,637</u>
<u>30,214</u>	<u>55,309</u>	<u>5,999</u>	<u>4,339</u>
<u>135,571</u> >	<u>144,164</u> >	< <u>24,614</u> >	< <u>22,916</u> >
<u>132,417</u> >	<u>147,128</u> >	< <u>25,176</u> >	< <u>25,061</u> >
<u>240,318</u> <	<u>94,364</u> >	< <u>115,909</u> >	<u>78,999</u>
<u>96,624</u>	<u>120,320</u>	<u>17,922</u>	<u>17,321</u>
<u>1,413,670</u>	<u>2,398,249</u>	< <u>39,846</u> >	< <u>41,307</u> >
<u>1,750,612</u>	<u>2,424,205</u>	< <u>137,833</u> >	<u>550,13</u>
< <u>595,209</u> >	< <u>896,956</u> >	<u>50,998</u>	< <u>18,705</u> >
<u>1,155,403</u>	<u>1,527,249</u>	< <u>86,835</u> >	<u>36,308</u>
<u>680,721</u>	<u>697,504</u>	<u>125,950</u>	<u>149,243</u>

PACIFIC SOUND RESOURCES, INC.

FINANCIAL STATEMENTS FOR THE
YEARS ENDED DECEMBER 31, 1992 AND 1991, AND
INDEPENDENT ACCOUNTANTS' REVIEW REPORT



INDEPENDENT ACCOUNTANTS' REVIEW REPORT

Stockholders
Board of Directors
Pacific Sound Resources, Inc.

We have reviewed the accompanying balance sheets of Pacific Sound Resources, Inc. (formerly Wyckoff Company) as of December 31, 1992 and 1991, and the related statements of operations, stockholders' equity, and cash flows for the years then ended, in accordance with *Statements on Standards for Accounting and Review Services*, issued by the American Institute of Certified Public Accountants. All information included in these financial statements is the representation of the management of Pacific Sound Resources, Inc.

A review consists principally of inquiries of Company personnel and analytical procedures applied to financial data. It is substantially less in scope than an audit in accordance with generally accepted auditing standards, the objective of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly, we do not express such an opinion.

As discussed in Notes 1 and 11, the Company is subject to actions by the United States Environmental Protection Agency, which continue to impact its financial condition.

Based on our reviews, we are not aware of any material modifications that should be made to the accompanying financial statements in order for them to be in conformity with generally accepted accounting principles.

Deloitte & Touche

March 26, 1993

PACIFIC SOUND RESOURCES, INC.

BALANCE SHEETS

DECEMBER 31, 1992 AND 1991

<u>ASSETS</u>	<u>1992</u>	<u>1991</u>
CURRENT ASSETS:		
Cash	\$ 105,019	\$ 122,507
Accounts receivable:		
Commercial	1,063,409	897,906
Producers and other	11,452	16,187
Less allowance for doubtful accounts	<u>(13,348)</u>	<u>(12,899)</u>
Accounts receivable, net	1,061,513	901,194
Notes receivable, current portion	105,836	53,854
Inventories:		
Finished products	393,806	447,964
Poles and pilings	16,984	157,244
Preservatives	<u>81,183</u>	<u>168,420</u>
Total inventories	491,973	773,628
Prepaid insurance and other	<u>73,503</u>	<u>77,451</u>
Total current assets	1,837,844	1,928,634
PROPERTY, PLANT, AND EQUIPMENT	10,176,073	9,526,051
Less accumulated depreciation	<u>(3,968,435)</u>	<u>(3,510,463)</u>
Property, plant, and equipment, net	6,207,638	6,015,588
DEVELOPMENT IN PROGRESS (Notes 3 and 11)	6,432,961	5,478,612
TIMBER AND TIMBERLANDS	365,457	366,907
OTHER ASSETS:		
Notes receivable	954,288	73,528
Investment, at cost	<u>21,500</u>	<u>21,500</u>
Total other assets	<u>975,788</u>	<u>95,028</u>
TOTAL	<u>\$15,819,688</u>	<u>\$13,884,769</u>

See independent accountants' review report
and notes to financial statements.

<hr/>		
<u>LIABILITIES AND STOCKHOLDERS' EQUITY</u>	<u>1992</u>	<u>1991</u>
CURRENT LIABILITIES:		
Accounts payable:		
Trade	\$ 941,112	\$ 1,215,302
Environmental, legal, and consulting	1,088,630	1,372,925
Notes payable to bank, short-term	1,898,107	1,382,538
Current portion of long-term liabilities	3,200,020	900,020
Accrued expenses	<u>239,807</u>	<u>205,780</u>
Total current liabilities	7,367,676	5,076,565
LONG-TERM LIABILITIES, less current portion	1,496,890	3,896,920
DEFERRED FEDERAL INCOME TAXES	1,015,260	322,335
COMMITMENTS AND CONTINGENCIES (Notes 10 and 11)		
STOCKHOLDERS' EQUITY:		
Preferred stock, 5% cumulative, par value \$100 per share – Authorized, 15,000 shares	1,500,000	1,500,000
Common stock, par value \$100 per share – Authorized, 12,000 shares	1,200,000	1,200,000
Retained earnings	<u>3,239,862</u>	<u>1,888,949</u>
Total stockholders' equity	5,939,862	4,588,949
TOTAL	<u>\$15,819,688</u>	<u>\$13,884,769</u>

PACIFIC SOUND RESOURCES, INC.

STATEMENTS OF OPERATIONS

YEARS ENDED DECEMBER 31, 1992 AND 1991

	<u>1992</u>	<u>1991</u>
REVENUES:		
Wood treatment sales	\$ 8,864,694	\$ 8,446,832
Rental income	425,762	502,803
Gain on sale of properties	1,706,248	1,063,774
Other	<u>75,123</u>	<u>100,777</u>
Total revenues	11,071,827	10,114,186
COSTS AND EXPENSES:		
Cost of wood treatment sales	7,872,745	7,849,624
Rental expense	137,876	101,127
Selling, general, and administrative	744,004	816,358
Environmental consulting and legal fees	32,695	51,182
Interest expense	<u>240,669</u>	<u>345,074</u>
Total costs and expenses	<u>9,027,989</u>	<u>9,163,365</u>
Income before federal income tax	2,043,838	950,821
DEFERRED FEDERAL INCOME TAX PROVISION	<u>692,925</u>	<u>322,335</u>
NET INCOME	<u>\$ 1,350,913</u>	<u>\$ 628,486</u>

PACIFIC SOUND RESOURCES, INC.

STATEMENTS OF STOCKHOLDERS' EQUITY YEARS ENDED DECEMBER 31, 1992 AND 1991

	<u>Preferred stock</u>		<u>Common stock</u>		<u>Retained earnings</u>	<u>Total stockholders' equity</u>
	<u>Shares outstanding</u>	<u>Amount</u>	<u>Shares outstanding</u>	<u>Amount</u>		
BALANCE, January 1, 1991	15,000	\$1,500,000	12,000	\$1,200,000	\$1,260,463	\$3,960,463
Acquisition of shares			(4,752)			
Net income					628,486	628,486
BALANCE, December 31, 1991	15,000	1,500,000	7,248	1,200,000	1,888,949	4,588,949
Net income					1,350,913	1,350,913
BALANCE, December 31, 1992	<u>15,000</u>	<u>\$1,500,000</u>	<u>7,248</u>	<u>\$1,200,000</u>	<u>\$3,239,862</u>	<u>\$5,939,862</u>

See independent accountants' review report and notes to financial statements.

PACIFIC SOUND RESOURCES, INC.

STATEMENTS OF CASH FLOWS YEARS ENDED DECEMBER 31, 1992 AND 1991

	<u>1992</u>	<u>1991</u>
OPERATING ACTIVITIES:		
Net income	\$1,350,913	\$ 628,486
Adjustments to reconcile net income to net cash provided by operating activities:		
Gain on sales of properties and equipment	(1,706,248)	(1,063,774)
Depreciation and amortization	685,240	738,628
Deferred federal income tax provision	692,925	322,335
Cash provided (used) by changes in operating assets and liabilities:		
Accounts receivable	(160,319)	293,652
Inventories	281,655	1,011,135
Other current assets	3,948	12,347
Accounts payable - Trade	(274,190)	137,257
Accrued expenses	<u>34,027</u>	<u>(223,338)</u>
Net cash provided by operating activities	907,951	1,856,728
INVESTING ACTIVITIES:		
Capital additions	(1,834,127)	(3,623,258)
Change in related payables	<u>(284,295)</u>	<u>864,494</u>
Capital expenditures	(2,118,422)	(2,758,764)
Proceeds from sales of properties	705,186	1,099,905
Collections on notes receivable	<u>72,258</u>	<u>53,804</u>
Net cash used by investing activities	(1,340,978)	(1,605,055)
FINANCING ACTIVITIES:		
Notes payable to bank, short-term, net	515,569	287,969
Payments on long-term liabilities	<u>(100,030)</u>	<u>(513,279)</u>
Net cash provided (used) by financing activities	<u>415,539</u>	<u>(225,310)</u>
INCREASE (DECREASE) IN CASH	(17,488)	26,363
CASH:		
Beginning of year	<u>122,507</u>	<u>96,144</u>
End of year	<u>\$ 105,019</u>	<u>\$ 122,507</u>

CIFIC SOUND RESOURCES, INC.

STATEMENTS OF CASH FLOWS (continued)
YEARS ENDED DECEMBER 31, 1992 AND 1991

	<u>1992</u>	<u>1991</u>
ADDITIONAL DISCLOSURE OF CASH FLOW INFORMATION:		
Cash paid during the year for interest (net of amount capitalized)	\$ 225,582	\$375,085
CASH INVESTING ACTIVITY:		
Notes receivable taken for properties sold	1,005,000	

See independent accountants' review report and
notes to financial statements.

PACIFIC SOUND RESOURCES, INC.

NOTES TO FINANCIAL STATEMENTS

YEARS ENDED DECEMBER 31, 1992 AND 1991

(See independent accountants' review report.)

NOTE 1: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Operations: The Company's principal business is the treatment and sale of wood products. Revenues from wood treatment sales are principally from commercial and railroad accounts. The Company also leases real property to various tenants and from time to time has acquired and disposed of investment land and timberland. During 1991, the Company changed its name from Wyckoff Company to Pacific Sound Resources, Inc.

Basis of presentation: At December 31, 1992, the Company had a working capital deficiency of \$5,529,832 and continues to use substantial amounts of cash and working capital for environmental cleanup activities as described in Note 11. In addition, at December 31, 1992, the Company was in violation of certain restrictive covenants of its bank borrowing agreements for which it has received a waiver of noncompliance through at least December 31, 1993, or has entered into a subsequent agreement (Note 5). Management's plans for generating sufficient cash or working capital to meet its obligations include:

- Sale of certain of its commercial property and timberlands for amounts substantially in excess of their net book value (see Note 12)
- Refinance or renegotiate terms of its bank debt and obtain additional financing
- Continuing positive cash flows from operations
- Completion of an agreement for sale or exchange of its West Seattle and Eagle Harbor sites.

Management believes that these sources will permit the Company to continue as a going concern. Accordingly, the financial statements have been prepared on a going concern basis.

However, the Company's ability to continue as a going concern, and to recover its recorded investments in its Eagle Harbor and West Seattle sites, is also substantially dependent on the outcome of any actions taken or to be taken by the United States Environmental Protection Agency (EPA). Such outcome cannot presently be determined.

Inventories: Inventories are stated at the lower of cost or market. Cost is determined using the last-in, first-out method for poles, piling, and preservatives and the first-in, first-out method for finished (treated) products. Had the Company stated its poles, piling, and preservatives inventories using the first-in, first-out method, such inventories would have been approximately \$217,000 and \$523,000 greater at December 31, 1992 and 1991, respectively, and the income before federal income tax would have been approximately \$306,000 and \$632,000 less, for the years ended December 31, 1992 and 1991, respectively.

Property and depreciation: Property, plant, and equipment; timber and timberlands; and development in progress are stated at cost. Depreciation is provided on manufacturing plant and equipment and on rental buildings and improvements using the straight-line method over periods ranging from five to 33 years.

NOTE 2: PROPERTY, PLANT, AND EQUIPMENT

Property, plant, and equipment at December 31 consists of:

	<u>1992</u>	<u>1991</u>
West Seattle manufacturing plant (Note 11):		
Land	\$ 901,740	\$ 901,740
Land and improvements - Environmental	2,497,201	1,838,723
Plant and equipment	2,944,035	2,942,540
Plant and equipment - Environmental	<u>1,590,737</u>	<u>1,590,737</u>
	7,933,713	7,273,740
Eagle Harbor site (Notes 3 and 11):		
Plant and equipment	252,825	252,825
Rental and investment:		
Land	1,310,410	1,320,361
Buildings and improvements	<u>361,238</u>	<u>361,238</u>
	1,671,648	1,681,599
General:		
Office equipment	199,501	199,501
Automobiles	<u>118,386</u>	<u>118,386</u>
	<u>317,887</u>	<u>317,887</u>
Total property, plant and equipment	10,176,073	9,526,051
Less accumulated depreciation	<u>(3,968,435)</u>	<u>(3,510,463)</u>
	<u>\$6,207,638</u>	<u>\$6,015,588</u>

NOTE 3: DEVELOPMENT IN PROGRESS

As described in Note 11, the Company has been incurring costs at its Eagle Harbor site for environmental cleanup activities, and no longer engages in wood treating or other operations at the site. As required by law and regulatory authorities, the Company is continuing its cleanup efforts at the site, which it believes will have substantial value as a commercial development when complete. Management continues to evaluate commercial opportunities for the site. Accordingly, such property is classified as development in progress in the accompanying balance sheets.

Development in progress at December 31 consists of:

	<u>1992</u>	<u>1991</u>
Land	\$ 98,285	\$ 98,285
Environmental equipment and improvements	<u>6,334,676</u>	<u>5,380,327</u>
	<u>\$6,432,961</u>	<u>\$5,478,612</u>

NOTE 4: NOTES RECEIVABLE

The Company sold certain parcels of property and has taken notes as payment, in part, in connection with such sales. The notes bear interest from 9% to 11% and are due in equal annual installments over a period of five to ten years. Such notes are collateralized by the related property.

Principal payments on such notes are due as follows:

1993	\$ 105,836
1994	114,391
1995	125,544
1996	137,158
1997	148,293
Thereafter	<u>428,902</u>
	<u>\$1,060,124</u>

NOTE 5: DEBT OBLIGATIONS

Long-term liabilities at December 31 consist of:

	<u>1992</u>	<u>1991</u>
Note payable to a bank due on demand, or if demand is not made, in monthly installments of \$8,335 plus interest at the bank's prime rate plus 1% (7% at December 31, 1992); collateralized by a deed of trust on certain real estate and scheduled to mature January 3, 1994; the bank has agreed to permit repayment in installments as scheduled through December 31, 1993	\$1,596,910	\$1,696,940
Note payable to bank under a \$2,000,000 line of credit, the terms of which were modified, effective January 21, 1993, to provide for a \$800,000 principal reduction on January 21, 1993, ten monthly installments of \$16,221 through November 1993, with the remaining principal balance due on or before December 1, 1993, collateralized by a deed of trust on certain real estate. The original note provided for repayment by November 30, 1993, and interest at the bank's prime rate plus 1% (7% at December 31, 1992).	<u>1,600,000</u>	<u>1,600,000</u>
Balance, <i>carried forward</i>	3,196,910	3,296,940

	<u>1992</u>	<u>1991</u>
Balance, <i>brought forward</i>	\$3,196,910	\$3,296,940
Note payable to bank under a \$1,500,000 line of credit, the terms of which were modified, effective January 23, 1993, to provide for ten monthly installments of \$30,414, with the remaining principal balance due on or before December 1, 1993, collateralized by a deed of trust on certain real estate. The original note provided for interest at the bank's prime rate plus 1% (7% at December 31, 1992).	<u>1,500,000</u>	<u>1,500,000</u>
	4,696,910	4,796,940
Less current portion	<u>3,200,020</u>	<u>900,020</u>
	<u>\$1,496,890</u>	<u>\$3,896,920</u>

Scheduled maturities of long-term liabilities as of December 31, 1992, are as follows:

1993	\$3,200,020
1994	<u>1,496,890</u>
	<u>\$4,696,910</u>

At December 31, 1992 and 1991, the Company had outstanding borrowings of \$1,198,107 and \$1,382,538, respectively, under a \$1,500,000 revolving line of credit bearing interest at the bank's prime rate plus .75% (6.75% at December 31, 1992), originally scheduled to expire January 21, 1993. The term has been extended through April 30, 1993, and the interest rate has been increased to the bank's prime rate plus 2%. The loan is collateralized by the Company's accounts receivable, inventory, and other assets.

Also at December 31, 1992, the Company had outstanding borrowings of \$700,000 under a \$700,000 line of credit which expired and was repaid on January 21, 1993, bearing interest at the bank's prime rate plus 2% (8% at December 31, 1992). The loan is collateralized by a deed of trust on certain real estate.

The Company's credit arrangements contain certain restrictive financial covenants including minimum levels of working capital, maximum debt to equity levels, net worth requirements, and restrictions on dividend payments. The Company was not in compliance with certain covenants at December 31, 1992 and 1991. The Company received a waiver from one lender that such covenants will not be enforced for the succeeding 12 months. The other institution did not exercise its right to demand payment for the 1991 covenant violations and has renegotiated the terms of the Company's borrowings effective January 1993, as described in the first paragraph above.

NOTE 6: EMPLOYEE PENSION PLANS

The Company contributes annually to a multi-employer defined benefit retirement plan on the basis of hours worked for hourly union employees. The Company also sponsors a defined benefit pension plan covering full-time salaried employees with benefits based on the average of the highest five consecutive calendar years of salary during the ten years prior to retirement. Total pension expense for both plans

was approximately \$92,000 in 1992 and \$111,200 in 1991. The Company makes annual contributions to the salaried employees' plan based on actuarially determined funding requirements.

Net pension cost for the salaried employees' defined benefit plan consists of the following for the year ended December 31:

	<u>1992</u>	<u>1991</u>
Service cost - Benefits earned during the year	\$ 55,741	\$ 69,808
Interest cost on projected benefit obligation	114,756	120,612
Actual return on plan assets	(56,547)	(219,542)
Net amortization and deferral - Other	<u>(73,619)</u>	<u>88,824</u>
	<u>\$ 40,331</u>	<u>\$ 59,702</u>

In determining the projected benefit obligation, the weighted average assumed discount rate was 8.25% and the assumed rate of future increases in salaries was 5.5%. The expected long-term rate of return on the market-related value of plan assets used in determining net periodic pension costs was 8.25% for both years. The market related value of plan assets equals the fair value of such assets.

The following table sets forth the plan's actuarially-determined funded status at December 31:

	<u>1992</u>	<u>1991</u>
Vested benefits	\$1,167,831	\$1,001,120
Nonvested benefits	<u>8,387</u>	<u>6,744</u>
Accumulated benefit obligation	1,176,218	1,007,864
Effect of projected future compensation levels	<u>343,277</u>	<u>399,081</u>
Projected benefit obligation	1,519,495	1,406,945
Plan assets at fair value	<u>1,580,282</u>	<u>1,611,050</u>
Plan assets in excess of projected benefit obligation	(60,787)	(204,105)
Unrecognized net gain for experience differing from assumptions	133,123	238,241
Unrecognized net liability at January 1, 1989, amortizing over 19 years	<u>(31,967)</u>	<u>(34,098)</u>
Pension liability	<u>\$ 40,369</u>	<u>\$ 38</u>

Plan assets at December 31, 1992, consist of approximately 50% money market funds, and 50% diversified collective investment fund sponsored by an insurance company consisting primarily of bonds.

NOTE 7: FEDERAL INCOME TAX

Deferred income taxes are provided for timing differences in the recognition of gains on sales and exchanges of condemned and certain other properties, depreciation expense and certain environmental

costs for federal income tax and financial statement purposes. For federal income tax purposes the Company has net operating loss (NOL) carryforwards available to offset future taxable income as of December 31, 1992, that expire as follows:

2000	\$ 108,000
2001	48,000
2003	857,000
2005	350,000
2006	<u>294,000</u>
	<u>\$1,657,000</u>

The Company also has investment tax credit carryforwards of \$46,136 that expire in the years 1999 and 2001.

For the years ended December 31, 1992 and 1991, the Company recognized deferred income tax provisions of \$692,925 and \$322,335, respectively. No current income taxes are due as a result of the Company's tax NOL carryforward position.

In February 1992, the Financial Accounting Standards Board issued Statement No. 109, *Accounting for Income Taxes*. The statement, which must be adopted in 1993, will result in deferred income taxes being reported in the financial statements using the liability method. Under this method, deferred taxes are carried in the balance sheet at the tax rates scheduled to be in effect at the time the items giving rise to the deferred taxes reverse. Management has not yet determined the effect nor the method of adoption of this statement on the Company's financial statements, but does not expect the effect to be material.

NOTE 8: STOCKHOLDERS' EQUITY

At December 31, 1992, undeclared dividends on the cumulative preferred stock were \$675,000 (\$40 per share), consisting of the \$75,000 (\$5 per share) annual dividend for 1984 through 1992.

During 1991, the Company acquired 4,752 shares of common stock from a stockholder at no cost to the Company.

NOTE 9: RENTAL INCOME

Property with a net book value of \$1,365,994 at December 31, 1992, is being leased to tenants. The Company accounts for these leases under the operating method, recognizing rental income as earned.

Several of the leases contain renewal options and provide for contingent rents based on a percentage of sales in excess of specified amounts, which were insignificant. Minimum future rents to be received under these noncancellable leases are:

		Number of leases
1993	\$ 299,200	9
1994	250,775	5
1995	276,550	4
1996	164,100	2
1997	<u>133,800</u>	2
	<u>\$1,124,425</u>	

NOTE 10: LEASE COMMITMENTS

The Company leases certain harbor property at its manufacturing plants. Rent expense under these operating leases was \$31,719 in 1992 and \$64,300 in 1991. Minimum future rents under the agreements of \$5,182 are due in 1993.

NOTE 11: ENVIRONMENTAL MATTERS

Pursuant to a consent order entered into between the Company and the United States Environmental Protection Agency (EPA) (and a subsequent administrative order issued by the EPA as to which the Company has reserved all legal rights of challenge) the Company is incurring costs at its Eagle Harbor facility to minimize releases of hazardous substances and to contain and treat hazardous substances, pollutants and contaminants in seeps and groundwater before discharge off-site. The most significant work requirement of the orders is the development and installation of a groundwater treatment and monitoring system which began operating in January 1990. The Company no longer engages in wood treating operations at the Eagle Harbor site, which it considers to be property under development (see Note 3). Management and third-party consultants believe that continued operation of such treatment system will result in continued recovery of usable product and will improve the safety and value of such property relative to its condition when purchased. During 1992 and 1991, the Company invested approximately \$954,000 and \$1,670,000 in connection with environmental cleanup activities at its Eagle Harbor plant site. Such costs include operating costs of the groundwater treatment system, equipment additions, a remedial investigation feasibility study, and related consulting and legal fees, as well as interest costs of \$272,000 and \$305,000, respectively, which have been capitalized in accordance with generally accepted accounting principles.

The Company is also incurring costs at its West Seattle facility to address environmental matters as required by law and regulatory authorities. On August 3, 1990, an amended administrative order was issued to the Company by the EPA pursuant to the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended. Such amended administrative order provides that the Company shall undertake certain actions at its West Seattle facility, including construction of a fence, installation of drip pads and pans, modifications of the existing waste water treatment facility to discharge under a modified permit captured drippage, contaminated groundwater and storm waters, conduct limited specified testing, monitoring and sampling at the site, design and implement a method of recovering immiscible oil, and perform a remedial investigation and feasibility study for the site. The Company has completed substantially all of the required actions except for extraction and treatment of contaminated groundwater and completion of a

remedial investigation and feasibility study for the site, which actions are currently being addressed by the Company. Substantially all of the costs of complying with the modified administrative requirements relate to activities which the Company believes will mitigate or prevent future contamination. During 1992 and 1991, the Company invested approximately \$503,000 and \$1,365,000 in connection with environmental cleanup activities at the West Seattle plant site. Such costs include extraction wells, drip pads, impervious surfaces, a remedial investigation feasibility study, and related consulting and legal fees which have been capitalized in accordance with generally accepted accounting principles. The Company is currently engaged in discussions concerning the potential sale or exchange of the West Seattle site; however, the outcome of such discussions is uncertain at this time.

The Company, along with other parties, may be subject to additional EPA actions related to Eagle Harbor, which has been designated as a separate unit of "Wyckoff/Eagle Harbor Superfund" site by the EPA. The Company is continuing its discussions with the EPA regarding both its Eagle Harbor and West Seattle sites. The ultimate outcome of the matters described above and the extent of possible future actions cannot presently be determined; accordingly, no amounts have been accrued for any costs that may result should the Company be required to take further actions to respond to the environmental concerns.

The Company has filed claims with its insurance carriers related to environmental liability matters and has retained legal counsel to assist in pursuing such claims. The Company is also investigating potential claims against other parties. Management is unable to reasonably predict the outcome of such claims and no amounts have been accrued for any recovery that may result.

NOTE 12: SUBSEQUENT EVENT

The Company sold two parcels of land that were held for investment purposes on January 21, 1993, and March 19, 1993, for net cash proceeds of approximately \$2,366,000 and a note receivable of \$800,000 for a gain of approximately \$2,800,000 before federal income taxes.

WYCKOFF COMPANY

FINANCIAL STATEMENTS FOR THE YEARS
ENDED DECEMBER 31, 1990 AND 1989, AND
INDEPENDENT ACCOUNTANTS' REVIEW REPORT

Deloitte & Touche



1111 Third Avenue
Seattle, Washington 98101-3290
Telephone: (206) 292-1800

Telecopier: (206) 343-7809

INDEPENDENT ACCOUNTANTS' REVIEW REPORT

The Stockholders and Board of
Directors of Wyckoff Company:

We have reviewed the accompanying balance sheets of Wyckoff Company as of December 31, 1990 and 1989, and the related statements of operations and retained earnings and of cash flows for the years then ended, in accordance with standards established by the American Institute of Certified Public Accountants. All information included in these financial statements is the representation of the management of Wyckoff Company.

A review consists principally of inquiries of Company personnel and analytical procedures applied to financial data. It is substantially less in scope than an audit in accordance with generally accepted auditing standards, the objective of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly, we do not express such an opinion.

Based on our review, we are not aware of any material modifications that should be made to the accompanying financial statements in order for them to be in conformity with generally accepted accounting principles.

Deloitte & Touche

August 20, 1991

WYCKOFF COMPANY

BALANCE SHEETS

DECEMBER 31, 1990 AND 1989

<u>ASSETS</u>	<u>1990</u>	<u>1989</u>
CURRENT ASSETS:		
Cash	\$ 96,144	\$ 73,777
Accounts receivable (Note 4):		
Commercial	863,897	1,042,359
Railroad	50,684	58,585
Producers and other	350,211	116,120
Less allowance for doubtful accounts	<u>(16,092)</u>	<u>(6,987)</u>
Accounts receivable, net	1,248,700	1,210,077
Inventories (Note 4):		
Finished products	448,892	1,001,968
Poles and piling	1,067,934	632,949
Preservatives	<u>267,937</u>	<u>175,521</u>
Total inventories	1,784,763	1,810,438
Insurance claim receivable		37,789
Federal income tax receivable	2,750	4,454
Prepaid insurance	<u>87,048</u>	<u>103,311</u>
Total current assets	3,219,405	3,239,846
PROPERTY, PLANT AND EQUIPMENT		
(Notes 2, 3, 8 and 9)	12,901,273	9,513,382
Less accumulated depreciation	<u>(4,378,748)</u>	<u>(4,060,174)</u>
Property, plant and equipment, net	8,522,525	5,453,208
TIMBER AND TIMBERLANDS	366,976	487,321
OTHER ASSETS:		
Note receivable	127,332	206,189
Investment, at cost	21,500	21,500
Other	<u></u>	<u>7,500</u>
Total other assets	<u>148,832</u>	<u>235,189</u>
TOTAL	<u><u>\$12,257,738</u></u>	<u><u>\$9,415,564</u></u>

LIABILITIES AND STOCKHOLDERS' EQUITY19901989

CURRENT LIABILITIES:

Accounts payable:

Trade

\$ 1,078,045

\$ 823,044

Environmental, legal and consulting (Note 8)

385,324

101,994

Notes payable to bank, short-term (Note 4)

1,894,569

1,457,097

Portion of long-term liabilities

due within one year (Note 3)

504,944

160,147

Accrued expenses:

Payroll and related costs

28,876

55,279

Pension contribution

67,037

103,770

Vacation and holiday pay

121,853

111,559

Property taxes

196,725

Other

211,352105,713

Total current liabilities

4,292,000

3,115,328

LONG-TERM LIABILITIES (portion due after
one year) (Note 3)

4,005,275

2,621,896

COMMITMENTS AND CONTINGENCIES (Notes 7,8)

STOCKHOLDERS' EQUITY:

Preferred stock, 5% cumulative,

par value \$100 a share; authorized

and outstanding, 15,000 shares (Note 5)

1,500,000

1,500,000

Common stock - Par value \$100 a share;

authorized and outstanding, 12,000 shares

1,200,000

1,200,000

Retained earnings

1,260,463978,340

Total stockholders' equity

3,960,463

3,678,340

TOTAL

\$12,257,738\$9,415,564

WYCKOFF COMPANY

STATEMENTS OF OPERATIONS AND RETAINED EARNINGS YEARS ENDED DECEMBER 31, 1990 AND 1989

	<u>1990</u>	<u>1989</u>
REVENUES:		
Wood treatment sales	\$10,977,552	\$11,075,514
Rental income (Note 6)	624,667	619,185
Gain on sale of properties	138,867	148,366
Other	<u>148,260</u>	<u>106,484</u>
Total revenues	11,889,346	11,949,549
COSTS AND EXPENSES:		
Cost of wood treatment sales	9,974,064	9,846,639
Rental expense	56,228	92,753
Selling, general, and administrative	1,187,363	1,171,605
Environmental costs (Note 8):		
Consulting and legal fees	47,124	128,208
Imputed interest on trust fund payments		7,941
Interest expense	<u>342,444</u>	<u>371,110</u>
Total costs and expenses	<u>11,607,223</u>	<u>11,618,256</u>
Income before federal income tax and extraordinary item	282,123	331,293
FEDERAL INCOME TAX PROVISION	<u>(96,000)</u>	<u>(115,000)</u>
Income before extraordinary item	186,123	216,293
EXTRAORDINARY ITEM:		
Reduction of income tax resulting from utilization of net operating loss carryforwards (Note 1)	<u>96,000</u>	<u>115,000</u>
NET INCOME	282,123	331,293
RETAINED EARNINGS:		
Beginning of year	<u>978,340</u>	<u>647,047</u>
End of year	<u>\$ 1,260,463</u>	<u>\$ 978,340</u>

WYCKOFF COMPANY

STATEMENTS OF CASH FLOWS YEARS ENDED DECEMBER 31, 1990 AND 1989

	<u>1990</u>	<u>1989</u>
OPERATING ACTIVITIES:		
Net income	\$ 282,123	\$ 331,293
Adjustments to reconcile net income to net cash provided (used) by operating activities:		
Gain on sales of properties	(138,867)	(148,365)
Depreciation and amortization	365,477	199,604
Cash provided (used) by changes in operating assets and liabilities:		
Accounts receivable	(38,623)	231,487
Inventories	25,675	(524,939)
Environmental trust fund receivable		296,359
Other current assets	55,756	(13,460)
Accounts payable	117,734	(570,831)
Accrued expenses	<u>(231,762)</u>	<u>33,831</u>
Net cash provided (used) by operating activities	437,513	(165,021)
INVESTING ACTIVITIES:		
Capital expenditures	(2,929,345)	(1,859,780)
Proceeds from sale of properties	262,194	155,157
Decrease (increase) in notes receivable	78,857	(34,501)
Decrease in other noncurrent assets	<u>7,500</u>	
Net cash used by investing activities	(2,580,794)	(1,739,124)
FINANCING ACTIVITIES:		
Notes payable to bank, short-term	437,472	1,457,097
Proceeds from long-term liabilities	1,900,000	800,000
Payments on long-term liabilities	<u>(171,824)</u>	<u>(367,814)</u>
Net cash provided by financing activities	<u>2,165,648</u>	<u>1,889,283</u>
INCREASE (DECREASE) IN CASH	22,367	(14,862)
CASH:		
Beginning of year	<u>73,777</u>	<u>88,639</u>
End of year	<u>\$ 96,144</u>	<u>\$ 73,777</u>

WYCKOFF COMPANY

STATEMENTS OF CASH FLOWS *(continued)*
YEARS ENDED DECEMBER 31, 1990 AND 1989

	<u>1990</u>	<u>1989</u>
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION:		
Interest paid (net of amount capitalized)	\$328,826	\$349,660
Capital additions financed by trade accounts payable and accrued expenses	508,431	123,960

WYCKOFF COMPANY

NOTES TO FINANCIAL STATEMENTS

YEARS ENDED DECEMBER 31, 1990 AND 1989

(See independent accountants' review report.)

NOTE 1: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Operations: The Company's principal business is the treatment and sale of wood products. Revenues from wood treatment sales are principally from commercial and railroad accounts. The Company also leases real property to various tenants and from time to time has acquired and disposed of investment land and timberland.

Inventories: Inventories are stated at the lower of cost or market. Cost is determined using the last-in, first-out method for poles, piling, and preservatives and the first-in, first-out method for finished (treated) products. Had the Company stated its poles, piling, and preservatives inventories using the first-in, first-out method, such inventories would have been approximately \$1,155,000 and \$1,013,000 greater at December 31, 1990 and 1989, respectively, and the income before federal income tax and extraordinary item for the years ended December 31, 1990 and 1989, would have been approximately \$425,000 and \$571,000, respectively.

Property and depreciation: Property, plant and equipment and timber and timberlands are stated at cost. Depreciation is provided on manufacturing plant and equipment and on rental buildings and improvements using the straight-line method over periods ranging from five to thirty-three years.

Employees' pension plans: The Company contributes annually to a multi-employer defined benefit retirement plan on the basis of hours worked for hourly union employees. The Company also sponsors a defined benefit pension plan covering full-time salaried employees with benefits based on the average of the highest five consecutive calendar years of salary during the ten years prior to retirement. Total pension expense for both plans was approximately \$195,900 in 1990 and \$204,400 in 1989. Current information concerning the Company's share of plan net assets and accumulated plan benefits for the union plan is not available. The Company makes annual contributions to the salaried employees' plan equal to the amount accrued for pension expense.

The Company adopted Statement of Financial Accounting Standards No. 87 as of January 1, 1989. This change in accounting principle did not have a significant effect on the Company's financial statements.

Net pension cost for the salaried employees' defined benefit plan consists of the following for the year ended December 31:

	<u>1990</u>	<u>1989</u>
Service cost - Benefits earned during the year	\$ 64,735	\$ 70,386
Interest cost on projected benefit obligation	182,428	179,984
Actual return on plan assets	(101,706)	(249,948)
Net amortization and deferral - Other	<u>(91,547)</u>	<u>91,957</u>
Net pension cost	<u>\$ 53,910</u>	<u>\$ 92,379</u>

In determining the projected benefit obligation, the weighted average assumed discount rate was 8.25% and the assumed rate of future increases in salaries was 5.5%. The expected long-term rate of return on the market-related value of plan assets used in determining net periodic pension costs was 8.25% for both years. The market related value of plan assets equals the fair value of such assets.

The following table sets forth the plan's actuarially-determined funded status at December 31:

	<u>1990</u>	<u>1989</u>
Vested benefits	\$ 1,488,679	\$ 2,094,262
Nonvested benefits	<u>2,303</u>	<u>3,241</u>
Accumulated benefit obligation	1,490,982	2,097,503
Effect of projected future compensation levels	<u>256,947</u>	<u>326,955</u>
Projected benefit obligation	1,747,929	2,424,458
Plan assets at fair value	<u>1,807,462</u>	<u>2,383,545</u>
Projected benefit obligation in excess of (less than) plan assets	(59,533)	40,913
Unrecognized gain for experience differing from assumptions	156,502	89,826
Unrecognized net liability at January 1, 1989, amortizing over 19 years	<u>(36,229)</u>	<u>(38,360)</u>
Accrued pension liability recognized in the balance sheet	<u>\$ 60,740</u>	<u>\$ 92,379</u>

Plan assets at December 31, 1990, consist of approximately 37% money market funds, 33% common stock funds, and 30% diversified collective investment fund sponsored by an insurance company consisting primarily of bonds.

Federal income tax: For federal income tax purposes the Company has net operating loss (NOL) carryforwards available to offset future taxable income. Taxable income or loss for 1990 has not been finalized, however, no significant tax liability is expected. NOL carryforwards as of December 31, 1989, expire as follows:

2000	\$ 347,000
2001	48,000
2002	<u>857,000</u>
	<u>\$1,252,000</u>

The Company also has investment tax credit carryforwards of \$46,136 that expire in the years 1999 and 2000.

During 1990 and 1989, the Company used its net operating loss carryforwards to offset pretax income for financial statement purposes and has reflected the related tax benefit as an extraordinary item. As of December 31, 1990, all such net operating loss carryforwards have been fully used.

The difference between net operating loss carryforwards for financial statement purposes and federal income tax purposes relate principally to timing differences in the recognition of gains on sales and exchanges of condemned and certain other properties and depreciation expense for federal income tax and financial statement purposes.

Accounting change: During 1990, the Company changed its method for accruing property tax expense from full accrual in the year preceding the lien and payment dates to accrual in the year of assessment and payment. Management believes that this method more clearly reflects the Company's liability for property taxes and matches the related expense with the benefit of use. This change resulted in an increase in pretax income of approximately \$140,000 in 1990.

NOTE 2: PROPERTY, PLANT AND EQUIPMENT

Property, plant and equipment at December 31, is summarized by usage as follows:

	<u>1990</u>	<u>1989</u>
West Seattle Manufacturing Plant:		
Land	\$ 901,740	\$ 901,740
Land and improvements - Environmental (Note 8)	588,597	
Plant and equipment	2,617,413	2,605,733
Plant and equipment - Environmental (Note 8)	1,252,706	467,309
Construction in progress - Environmental (Note 8)	<u>85,925</u>	<u>22,869</u>
	5,446,381	3,997,651
Eagle Harbor Site (Note 8):		
Land	98,285	98,285
Plant and equipment	1,541,761	1,541,761
Environmental equipment and improvements	3,714,116	330,590
Construction in progress - Environmental	<u></u>	<u>1,463,273</u>
	5,354,162	3,433,909
Rental and investment:		
Land	1,341,985	1,342,696
Buildings and improvements	<u>410,045</u>	<u>373,204</u>
	1,752,030	1,715,900
General:		
Office equipment	199,834	199,794
Automobiles	<u>148,866</u>	<u>166,128</u>
	<u>348,700</u>	<u>365,922</u>
Total property, plant and equipment	12,901,273	9,513,382
Less accumulated depreciation	<u>(4,378,748)</u>	<u>(4,060,174)</u>
Property, plant and equipment, net	<u>\$ 8,522,525</u>	<u>\$ 5,453,208</u>

NOTE 3: LONG-TERM LIABILITIES

Long-term liabilities at December 31, are as follows:

	<u>1990</u>	<u>1989</u>
Note payable to a bank in monthly installments of \$8,335 plus interest at the bank's prime rate plus 1% (11% at December 31, 1990). Collateralized by a deed of trust on certain real estate and scheduled to mature January 3, 1994	\$ 1,796,960	\$ 1,899,980
Note payable to bank under a \$2,000,000 line of credit requiring a payment by September 30, 1991, of the lesser of \$400,000 or 20% of the outstanding balance at December 31, 1990, and payments of \$10,000 a month to September 30, 1991. Thereafter, annual payments equal to or greater than the first 1991 payment are required by December 31, with the balance due November 30, 1993. The note bears interest at the bank's prime rate plus 1% (11% at December 31, 1990). Collateralized by a deed of trust on certain real estate	2,000,000	800,000
Note payable to bank under a \$1,500,000 line of credit requiring a payment by January 4, 1993, of the lesser of \$750,000 or one half of the outstanding balance at December 31, 1992, with balance due November 30, 1993. The note bears interest at the bank's prime rate plus 1% (11% at December 31, 1990). Collateralized by a deed of trust on certain real estate	700,000	
Real estate contract - payable to the estate of a former stockholder of the Company in monthly installments of \$5,988, including interest at 6%; final payment due on April 1, 1991. Land and improvements with a cost of \$70,000 pledged as collateral	<u>13,259</u>	<u>82,063</u>
	4,510,219	2,782,043
Less current portion	<u>504,944</u>	<u>160,147</u>
Long-term portion	<u>\$4,005,275</u>	<u>\$2,621,896</u>

Maturities of long-term liabilities (rounded) as of December 31, 1990, are as follows:

1991	\$ 505,000
1992	500,000
1993	2,000,000
1994	<u>1,505,000</u>
	<u>\$4,510,000</u>

The Company's notes payable to banks contain certain restrictive financial covenants including minimum levels of working capital, maximum debt to equity levels and net worth requirements. The Company was not in compliance with the working capital covenant related to one note payable at December 31, 1990; however, the Company has received a waiver from the lender that such covenant will not be enforced through December 31, 1991.

NOTE 4: NOTES PAYABLE TO BANK - SHORT-TERM

At December 31, 1990 and 1989, the Company had outstanding borrowings of \$1,894,569 and \$1,457,097, respectively, under a \$3,000,000 revolving line of credit expiring June 30, 1992, bearing interest at the bank's prime rate plus .75%. The loan is collateralized by the Company's accounts receivable, inventory and other assets.

NOTE 5: DIVIDENDS

At December 31, 1990, undeclared dividends on the cumulative preferred stock were \$525,000 (\$35 per share), consisting of the \$75,000 (\$5 per share) annual dividend for 1984 through 1990.

NOTE 6: RENTAL INCOME

Property with a net book value of \$1,434,600 at December 31, 1990, is being leased to tenants for periods through 1993. The Company accounts for these leases under the operating method, recognizing rental income as earned. Several of the leases contain renewal options and provide for contingent rents based on a percentage of sales in excess of specified amounts. Total contingent rents received in 1990 and 1989 were \$6,677 and \$2,715, respectively. Minimum future rents to be received under these noncancellable leases are:

		Number of <u>Leases</u>
1991	\$295,650	9
1992	156,100	5
1993	<u>29,000</u>	3
	<u>\$480,750</u>	

NOTE 7: LEASE COMMITMENTS

The Company leases office space and certain harbor property at its manufacturing plants. Rent expense under these operating leases was \$84,000 in 1990 and \$82,000 in 1989. Minimum future rents under the agreements, which provide for periodic rent adjustments are:

1991	\$38,000
1992	<u>7,000</u>
	<u>\$45,000</u>

NOTE 8: ENVIRONMENTAL MATTERS

On April 19, 1985, the Company established an Environmental Trust Fund (the Trust Fund) with a commercial bank to provide funds for monitoring, testing and sampling, and to prevent the

future release to the environment of any discovered pollutants, contaminants or hazardous substances from the Company's West Seattle and Eagle Harbor plant sites. All required payments to the Trust Fund have been made. The Trust Fund provided that the Company would be reimbursed for environmental costs which conform to the objectives of the Trust Fund. The Company has received all amounts due from the Trust Fund for such expenditures. During 1989, the Company received \$705,000 of which \$296,000 was receivable at December 31, 1988. The remaining \$409,000 was recorded as a reduction of the capitalized cost of environmental related assets.

Pursuant to a consent order entered into between the Company and the United States Environmental Protection Agency (EPA) (and a subsequent administrative order issued by the EPA as to which the Company has reserved all legal rights of challenge) the Company is incurring costs at its Eagle Harbor facility to minimize releases of hazardous substances and to contain and treat hazardous substances, pollutants and contaminants in seeps and groundwater before discharge off-site. The most significant work requirement of the orders is the development and installation of a groundwater treatment and monitoring system which began operating in January 1990. The Company no longer engages in wood treating operations at the Eagle Harbor site. Management and third party consultants believe that continued operation of such treatment system will result in continued recovery of usable product and will improve the safety and value of such property relative to its condition when purchased. During 1990, the Company invested approximately \$1,900,000 in connection with environmental cleanup activities at its Eagle Harbor plant site. Such costs include operating costs of the groundwater treatment system and related consulting and legal fees, as well as interest costs of \$250,000, which have been capitalized in accordance with generally accepted accounting principles.

The Company is also incurring costs at its West Seattle facility to address environmental matters as required by law and regulatory authorities. On August 3, 1990, an amended administrative order was issued to the Company by the EPA pursuant to the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended. Such amended administrative order provides that the Company shall undertake certain actions at its West Seattle facility, including construction of a fence, installation of drip pads and pans, modifications of the existing waste water treatment facility to discharge under a modified permit captured drippage, contaminated groundwater and storm waters, conduct limited specified testing, monitoring and sampling at the site, design and implement a method of recovering immiscible oil, and perform a remedial investigation and feasibility study for the site. The Company has completed substantially all of the required actions except for extraction and treatment of contaminated groundwater and completion of a remedial investigation and feasibility study for the site, which actions are currently being addressed by the Company. Substantially all of the costs of complying with the modified administrative requirements relate to activities which the Company believes will mitigate or prevent contamination. During 1990, the Company invested approximately \$1,400,000 in connection with environmental cleanup activities at the West Seattle plant site. Such costs include extraction wells, drip pads, impervious surfaces and related consulting and legal fees which have been capitalized in accordance with generally accepted accounting principles.

The Company, along with other parties, may be subject to additional EPA actions related to Eagle Harbor, which has been designated as a separate unit of "Wyckoff/Eagle Harbor Superfund" site by the EPA. The Company is continuing its discussions with the EPA regarding both its Eagle Harbor and West Seattle sites. The ultimate outcome of the matters described above cannot presently be determined; accordingly, no amounts have been accrued for any costs that may result

should the Company be required to take further actions to respond to the environmental concerns.

The Company has filed claims with its insurance carriers related to environmental liability matters and has retained legal counsel to assist in pursuing such claims. The Company is also investigating potential claims against other parties. Management is unable to reasonably predict the outcome of such claims and no amounts have been accrued for any recovery that may result.

NOTE 9: SUBSEQUENT EVENT

The Company sold a parcel of land that was held for investment purposes on June 29, 1991, for net cash of approximately \$1,017,000 at a pretax gain of \$995,000.

INDEPENDENT ACCOUNTANTS' REVIEW REPORT

The Stockholders and Board of
Directors of Wyckoff Company:

We have reviewed the accompanying balance sheets of Wyckoff Company as of December 31, 1988 and 1987 and the related statements of operations and retained earnings and of cash flows for the years then ended, in accordance with standards established by the American Institute of Certified Public Accountants. All information included in these financial statements is the representation of the management of Wyckoff Company.

A review consists principally of inquiries of Company personnel and analytical procedures applied to financial data. It is substantially less in scope than an audit in accordance with generally accepted auditing standards, the objective of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly, we do not express such an opinion.

Based on our review, we are not aware of any material modifications that should be made to the accompanying financial statements in order for them to be in conformity with generally accepted accounting principles.

Deloitte Haskins + Sells

March 17, 1989

WYCKOFF COMPANY

BALANCE SHEETS, DECEMBER 31, 1988 AND 1987

ASSETS	NOTES	1988	1987	LIABILITIES	NOTES	1988	1987
CURRENT ASSETS:				CURRENT LIABILITIES:			
Cash		\$ 88,639	\$ 19,037	Accounts payable:			
Accounts receivable:	4			Trade		\$1,231,193	\$ 653,425
Commercial		1,228,610	827,826	Environmental, legal and consulting	8	126,416	256,757
Railroad		148,944	129,364	Imputed interest on environmental			
Producers and other		83,671	65,813	trust payments	8	14,300	16,912
Less allowance for doubtful accounts		(19,661)	(5,530)	Notes payable to bank - short term	4		1,200,000
Accounts receivable - net		<u>1,441,564</u>	<u>1,017,473</u>	Environmental settlement payable - current			
				portion	3,8	197,760	84,123
Note receivable			<u>763,850</u>	Portion of other long-term liabilities due			
				within one year	3	161,719	60,738
Inventories:	4			Accrued expenses:			
Finished products		706,469	475,177	Payroll and related costs		96,677	79,844
Poles and piling		344,781	362,085	Pension contribution		16,562	14,616
Preservatives		<u>234,249</u>	<u>196,583</u>	Vacation and holiday pay		137,175	142,538
Total inventories		<u>1,285,499</u>	<u>1,033,845</u>	Property taxes		243,859	222,235
				Other		<u>44,942</u>	<u>55,569</u>
Environmental trust fund receivable	8	296,359	90,000	Total current liabilities		<u>2,270,603</u>	<u>2,786,757</u>
Insurance claim receivable		42,481	42,481				
Federal income tax receivable		3,618	3,846	DEFERRED FEDERAL INCOME TAX			<u>111,938</u>
Prepaid insurance		85,995	92,256				
Deferred federal income tax			<u>45,462</u>	LONG-TERM LIABILITIES (portion due after			
Total current assets		<u>3,244,155</u>	<u>3,108,250</u>	one year)	3,8	<u>1,990,378</u>	<u>349,856</u>
PROPERTY, PLANT, AND EQUIPMENT	2,3,8,9	7,661,314	7,533,857	COMMITMENTS AND CONTINGENCIES	7,8		
Less accumulated depreciation		<u>(3,985,499)</u>	<u>(3,867,327)</u>				
Property, plant, and equipment - net		<u>3,675,815</u>	<u>3,666,530</u>	STOCKHOLDERS' EQUITY:			
				Preferred stock, 5% cumulative - par value			
TIMBER AND TIMBERLANDS		<u>487,370</u>	<u>487,370</u>	\$100 a share; authorized and outstanding,			
				15,000 shares	5	1,500,000	1,500,000
OTHER ASSETS:				Common stock - par value \$100 a share;			
Note receivable		171,688	63,769	authorized and outstanding, 12,000 shares		1,200,000	1,200,000
Investment - at cost		21,500	21,500	Retained earnings	5	<u>647,047</u>	<u>1,406,368</u>
Other		<u>7,500</u>	<u>7,500</u>	Total stockholders' equity		<u>3,347,047</u>	<u>4,106,368</u>
Total other assets		<u>200,688</u>	<u>92,769</u>				
				TOTAL		<u>\$7,608,028</u>	<u>\$7,354,919</u>
TOTAL		<u>\$ 7,608,028</u>	<u>\$ 7,354,919</u>				

See notes to financial statements and independent accountants' review report.

WYCKOFF COMPANY

STATEMENTS OF OPERATIONS AND RETAINED EARNINGS
FOR THE YEARS ENDED DECEMBER 31, 1988 AND 1987

	<u>NOTES</u>	<u>1988</u>	<u>1987</u>
REVENUES:			
Wood treatment sales		\$ 9,173,049	\$ 9,202,614
Rental income	6	592,948	570,981
Gain on sale of timberlands and other properties		144,792	897,632
Other		<u>89,554</u>	<u>225,945</u>
Total		<u>10,000,343</u>	<u>10,897,172</u>
COSTS AND EXPENSES:			
Cost of wood treatment sales		8,824,493	9,147,553
Rental expense		100,672	137,863
Selling, general, and administrative		1,129,334	1,102,739
Environmental costs:	8		
Consulting and legal fees		582,032	748,316
Imputed interest on trust fund payments		23,265	28,327
Other interest		<u>166,344</u>	<u>242,736</u>
Total		<u>10,826,140</u>	<u>11,407,534</u>
LOSS BEFORE FEDERAL INCOME TAX		<u>(825,797)</u>	<u>(510,362)</u>
FEDERAL INCOME TAX BENEFIT:			
Current			262
Deferred		<u>66,476</u>	<u>142,144</u>
Total		<u>66,476</u>	<u>142,406</u>
NET LOSS		(759,321)	(367,956)
RETAINED EARNINGS, BEGINNING OF YEAR		<u>1,406,368</u>	<u>1,774,324</u>
RETAINED EARNINGS, END OF YEAR		<u>\$ 647,047</u>	<u>\$ 1,406,368</u>

See notes to financial statements and independent accountants' review report.

WYCKOFF COMPANYSTATEMENTS OF CASH FLOWS
FOR THE YEARS ENDED DECEMBER 31, 1988 AND 1987

	<u>1988</u>	<u>1987</u>
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	\$ (759,321)	\$ (367,956)
Adjustments to reconcile net loss to net cash from operating activities:		
Gain on sales of timberland and other properties	(144,792)	(897,632)
Depreciation and amortization	187,364	228,112
Deferred federal income tax benefit	(66,476)	(142,144)
Increase in accounts receivable	(424,091)	(64,552)
(Increase) decrease in inventories	(251,654)	1,142,545
Increase in environmental trust fund receivable	(206,359)	
Decrease in federal income tax receivable	228	60
(Increase) decrease in prepaid insurance	6,261	(10,117)
Increase (decrease) in accounts payable	444,815	(734,105)
Increase (decrease) in accrued expenses	<u>24,413</u>	<u>(19,864)</u>
Net cash used in operating activities	<u>(1,189,612)</u>	<u>(865,653)</u>
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchases of property, plant and equipment	(204,607)	(369,298)
Proceeds from sale of timberlands and other properties	152,750	3,014,632
(Increase) decrease in notes receivable	<u>655,931</u>	<u>(827,619)</u>
Net cash provided by investing activities	<u>604,074</u>	<u>1,817,715</u>
CASH FLOWS FROM FINANCING ACTIVITIES:		
Payments on note payable to bank	(1,200,000)	(900,000)
Proceeds from long-term borrowings	2,000,000	
Payments on long-term liabilities	<u>(144,860)</u>	<u>(134,260)</u>
Net cash provided by (used in) financing activities	<u>655,140</u>	<u>(1,034,260)</u>
INCREASE (DECREASE) IN CASH	69,602	(82,198)
CASH AT BEGINNING OF YEAR	<u>19,037</u>	<u>101,235</u>
CASH AT END OF YEAR	<u>\$ 88,639</u>	<u>\$ 19,037</u>
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION:		
Interest paid	\$ 194,183	\$ 261,339
Income taxes received	3,846	4,168

See notes to financial statements and independent accountants' review report.

WYCKOFF COMPANY

NOTES TO FINANCIAL STATEMENTS

FOR THE YEARS ENDED DECEMBER 31, 1988 AND 1987

(See Independent Accountants' Review Report)

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Operations - The Company owns two wood treatment plants. Revenues from wood treatment sales are principally from commercial and railroad accounts. The Company also leases real property to various tenants and from time to time has acquired and disposed of investment land and timberland.

Basis of Presentation - During 1988, the Company adopted Statement of Financial Accounting Standards No. 95, "Statement of Cash Flows", which required that the statement of changes in financial position be replaced with a statement of cash flows. Prior year amounts have been restated to conform with the current year's presentation as permitted by the Standard.

Inventories - Inventories are stated at the lower of cost or market. Cost is determined using the last-in, first-out method for poles, piling, and preservatives and the first-in, first-out method for finished products. Had the Company stated its poles, piling, and preservatives inventories using the first-in, first-out method, the loss before federal income tax for the years ended December 31, 1988 and 1987 would have been approximately \$858,000 and \$314,000, respectively.

Property and Depreciation - Property, plant and equipment and timber and timberlands are stated at cost. Depreciation is provided on manufacturing plant and equipment and on rental buildings and improvements using the straight-line method over periods ranging from five to thirty-three years.

Employees' Pension Plans - The Company contributes to a multi-employer defined-benefit retirement plan on the basis of hours worked for hourly union employees and sponsors a defined-benefit pension plan covering full-time salaried employees. Total pension expense for both plans, which includes amortization of past service cost for the salaried employees' plan over 10 years, was approximately \$86,700 in 1988 and \$66,400 in 1987. Current information concerning the Company's share of plan net assets and accumulated plan benefits for the union plan is not available. As of May 31, 1987, the Company's share of the union plan's unfunded liability for vested benefits was \$274,000. The Company makes annual contributions to the salaried employees' plan equal to the amount accrued for pension expense.

A summary of accumulated plan benefits and plan net assets for the salaried employees' plan as of January 1 of each year (the most recent actuarial valuation dates) are as follows:

	<u>1988</u>	<u>1987</u>
Actuarial present value of accumulated plan benefits:		
Vested	\$1,601,216	\$1,569,231
Nonvested	<u>19,321</u>	<u>24,595</u>
Total	<u>\$1,620,537</u>	<u>\$1,593,826</u>
Net assets available for benefits	<u>\$2,108,609</u>	<u>\$2,042,600</u>

The weighted average assumed rate of return used in determining the actuarial present value of accumulated plan benefits was 7-1/2% for 1988 and 7% for 1987.

Federal Income Tax - For federal income tax purposes, the Company has net operating loss carryforwards available to offset future taxable income, expiring as follows:

2000	\$ 500,500
2001	47,600
2002	<u>821,000</u>
	<u>\$1,369,100</u>

The Company also has investment tax credit carryforwards of \$46,136 that expire in the years 1999 and 2000.

For financial statement purposes, the Company has a net operating loss carryforward of approximately \$448,000, for which no tax benefit has been recognized. A tax benefit for the net operating loss and investment tax credit carryforwards for federal income tax purposes has been recognized to the extent that such carryforwards could be offset against net deferred federal income tax credits. The effective tax rates and statutory tax rates differ principally because the carryforwards were offset against deferred tax credits originally provided at lower rates and, in 1988, because no tax benefit could be recognized for the \$448,000 loss carryforward for financial statement purposes.

Previously deferred federal income tax related principally to timing differences in the recognition of the following transactions for federal income tax and financial statement purposes:

- . Gains on sales and exchanges of condemned and certain other properties - nontaxable
- . Depreciation expense - accelerated for tax purposes
- . Provision for initial costs of the environmental settlement - deducted for tax purposes as paid.

2. PROPERTY, PLANT, AND EQUIPMENT

Property plant and equipment at December 31, 1988 and 1987 is summarized by usage as follows:

	<u>1988</u>	<u>1987</u>
Manufacturing:		
Land	\$1,000,025	\$1,000,025
Plant and equipment	4,629,995	4,548,609
Construction in progress		5,685
Subtotal	<u>5,630,020</u>	<u>5,554,319</u>
Rental and investment:		
Land	1,349,398	1,357,351
Buildings and improvements	373,204	297,038
Subtotal	<u>1,722,602</u>	<u>1,654,389</u>
General:		
Office equipment	183,848	198,547
Automobiles	124,844	126,602
Subtotal	<u>308,692</u>	<u>325,149</u>
Total property, plant, and equipment	7,661,314	7,533,857
Less accumulated depreciation	<u>3,985,499</u>	<u>3,867,327</u>
Property, plant, and equipment - net	<u>\$3,675,815</u>	<u>\$3,666,530</u>

3. LONG-TERM LIABILITIES

Long-term liabilities at December 31, 1988 and 1987 are as follows:

	<u>1988</u>	<u>1987</u>
Note payable to a bank in monthly installments of \$8,335 plus interest at the bank's prime rate plus 1% (a total of 11.5% at December 31, 1988). Collateralized by a deed of trust on certain real estate and scheduled to mature January 3, 1994.	\$2,000,000	
Real estate contract - payable to the estate of a former stockholder of the Company in monthly installments of \$5,988, including interest at 6%; final payment due on April 1, 1991. Land and improvements with a cost of \$70,000 pledged as collateral. In the opinion of management, the land and improvements have a fair value in excess of the contract balance.	<u>152,097</u>	<u>\$212,835</u>
Total forward	<u>\$2,152,097</u>	<u>\$212,835</u>

	<u>1988</u>	<u>1987</u>
Total forward	\$2,152,097	\$212,835
Non-interest bearing environmental settlement payable to the United States in installments through October 1989; required payments have been discounted at 10.5%; collateralized by a letter of credit which in turn is collateralized by certain real estate (Note 8).	<u>197,760</u>	<u>281,882</u>
Total	2,349,857	494,717
Less current portion of environmental settlement	<u>197,760</u>	<u>84,123</u>
Less current portion of other liabilities	<u>161,719</u>	<u>60,738</u>
Long-term portion	<u>\$1,990,378</u>	<u>\$349,856</u>

Maturities of long-term liabilities (rounded) as of December 31, 1988 are as follows:

1989	\$ 360,000
1990	163,000
1991	119,000
1992	100,000
1993	100,000
Thereafter	<u>1,508,000</u>
Total	<u>\$2,350,000</u>

4. NOTES PAYABLE TO BANK - SHORT TERM

At December 31, 1987, the Company had borrowings under a revolving line of credit of \$1,200,000, bearing interest at the Bank's Basic Rate plus 1/2% (a total of 9-1/4%). The loan was collateralized primarily by the Company's accounts receivable and inventory and was repaid in 1988.

5. DIVIDENDS

At December 31, 1988, undeclared dividends on the cumulative preferred stock were \$375,000, consisting of the \$75,000 annual dividend for 1984 through 1988.

6. RENTAL INCOME

Property with a net book value of \$1,428,157 at December 31, 1988 is being leased to tenants for periods through 1993. The Company accounts for these leases under the operating method, recognizing rental income as earned. Several of the leases contain renewal options and provide for contingent rents based on a percentage of sales in excess of specified amounts. Total contingent rents received in 1988 and 1987 were \$10,000 and \$37,000, respectively. Minimum future rents to be received under these noncancellable leases are:

		Number of <u>Leases</u>
1989	\$ 593,000	12
1990	405,000	9
1991	216,000	5
1992	220,000	5
1993	<u>82,000</u>	3
Total	<u>\$1,516,000</u>	

7. LEASE COMMITMENTS

The Company leases office space and certain harbor property at its manufacturing plants. Rent expense under these operating leases was \$72,000 in 1988 and \$84,000 in 1987. Minimum future rents under the agreements, which provide for periodic rent adjustments are:

1989	\$ 57,600
1990	83,200
1991	34,100
1992	<u>7,000</u>
Total	<u>\$181,900</u>

8. ENVIRONMENTAL MATTERS

The Company previously established, on April 19, 1985, an Environmental Trust Fund with a commercial bank to provide funds for monitoring, testing and sampling, and to prevent the future release to the environment of any discovered pollutants, contaminants or hazardous substances from the Company's West Seattle and Eagle Harbor plant sites and clean up of soil or ground water at or adjacent to those sites.

At December 31, 1988, the remaining required payments to the Environmental Trust Fund under the agreement are:

\$110,000	on/before	May 2, 1989
<u>110,000</u>	on/before	November 2, 1989
<u>\$220,000</u>	Total (See Note 3)	

The Company's payments to the Environmental Trust Fund are secured by an unconditional letter of credit from a commercial bank. The Company pledged its commercial property at 4215 S.W. Alaska Street as collateral for the letter of credit.

The Company is incurring expenses at its Eagle Harbor facility to minimize releases of hazardous substances and to contain and treat hazardous substances, pollutants and contaminants in seeps and groundwater before discharge off-site. In addition, the Company is incurring expenses from time to time at its West Seattle facility to address environmental matters as required by law and regulatory authorities. The Wyckoff Environmental Trust Fund provides that the Company shall be reimbursed from trust funds for environmental expenses which conform to the objectives of the Trust Fund.

During 1988, the Company incurred environmental expenses of \$206,259 at its Eagle Harbor plant which qualify for reimbursement from the Trust Fund. Accordingly, such amounts are included in the environmental trust fund receivable at December 31, 1988. Management is unable to reasonably estimate the amount of future expenditures that may be incurred related to environmental matters; accordingly, no provision for any liability related to such matters has been made in the accompanying financial statements.

9. SUBSEQUENT EVENTS

Subsequent to December 31, 1988 the Company agreed to sell a parcel of downtown Seattle investment real estate for approximately \$4 million, subject to certain conditions acceptable to the buyer. Until May 26, 1989 the buyer has the right to terminate the agreement without cost. After that date, the agreement may be extended through February 22, 1990, at the buyer's option, upon payment of stipulated amounts for that privilege.

On January 4, 1989, the Company entered into borrowing agreements with a bank, collateralized by the Company's inventories, accounts receivable and other assets, as follows:

- . Term loan of \$2,000,000, payable in annual installments of the lesser of 20% of the outstanding balance at December 31, 1989 or \$400,000 through November 30, 1993. Subsequent to 1989, the annual installment payments may be increased to an amount to be determined at a later date. Interest at the bank's prime rate plus 1% is payable monthly.
- . Line of credit of \$1,500,000 (reduced to \$1,250,000 once borrowings are made under the term loan), expiring December 1, 1989, bearing interest at the bank's prime rate plus 1%.

EMPLOYMENT AGREEMENT

This Employment Agreement is made and entered into as of this _____ day of _____, 1994, by and among Ted G. DePriest ("DePriest") or ("Employee"), Pacific Sound Resources, Inc. ("Company"), and the Pacific Sound Resources Environmental Trust ("Trust"). The Company and Trust are sometimes collectively referred to as "Employers" and the trustee of the Trust is referred to as "Trustee".

In exchange for the mutual promises contained herein, the Employers and DePriest agree as follows:

1. The Company and Trust agree to employ DePriest to perform duties consistent with and that effectuate the purposes of the Trust and the consent decree to which this Employment Agreement is attached ("Consent Decree"). DePriest's duties to the Company shall be limited to those ministerial duties specified in that certain Liquidation Plan attached to the Consent Decree. DePriest shall be supervised by the Trustee, and shall be responsible to the Trust in all matters hereunder. All decisions to be made hereunder by the Employers affecting DePriest and his duties shall be made by the Trust, and not by the Company. DePriest shall be a fiduciary of the Trust. The term of the employment hereunder shall be for a period of six (6) months commencing on the date the Consent Decree is entered by the Court ("Entry Date"). Any existing employment agreements between DePriest and the Company shall be deemed to be terminated on the Entry Date. The term of this Agreement shall not be reduced or diminished for any reason including a determination by the Employers that no further work by DePriest is necessary or

appropriate; provided, DePriest's employment hereunder may be terminated for good cause shown, as provided in paragraph 5 hereof.

2. As compensation for services to be provided by DePriest hereunder, DePriest shall be paid a monthly salary of \$9,612, payable on the first of each month. Payment for the first and last month will be appropriately prorated. In addition, the Employers shall provide all benefits (with comparable limits, coverage, and deductibles) to DePriest heretofore provided to DePriest by the Company, which shall consist of life insurance, long term disability insurance, medical, dental, and vision insurance, participation in a defined benefit pension plan, an automobile and all associated parking, gasoline, automobile insurance, and maintenance expenses for such automobile, and paid leave on all federal holidays. If the Company terminates its defined benefit pension plan, the Employers shall provide to DePriest the after tax equivalent cash benefit, that is, the additional after tax benefit which would have been provided by such a plan if the Company had not terminated such plan during the term of this Agreement, as determined by the actuaries for the Company's plan at the expense of the Trust. As additional consideration for services to be rendered hereunder and for no other consideration, the Employers shall transfer to DePriest all of the Company's good will, trade and business secrets, customer information, proprietary technology, and other general intangibles, including all right, title, and interest in and to the Submerged Media Biofilter and the biological organisms utilized in the system which have been developed and are owned by

the Company. The Employers may continue indefinitely to use the systems currently in place on the real property of the Company utilizing the proprietary technology transferred to DePriest without payment for the use of such technology. Further, on behalf of the Company, DePriest will locate and provide to the Trust and Trustee all information within the possession of the Company concerning its real property interests.

3. During the term of his employment, DePriest shall have an option to acquire ownership of any asset, tangible or intangible, owned by the Company as of the Entry Date, exclusive of cash or its equivalent, real property, securities of any kind, inventory, work in progress, finished products, and accounts receivable. DePriest shall exercise his option to purchase, if at all, at fair market value. The Trustee shall initially advise DePriest of his determination of fair market value of any asset DePriest advises the Trustee DePriest desires to purchase. If DePriest believes fair market value is less than the Trustee's determination, DePriest and the Trustee shall agree upon a qualified independent appraiser or other qualified independent person who shall determine the fair market value of such asset. The fees and costs of such individual shall be paid twenty percent (20%) by DePriest and eighty percent (80%) by the Trust. The Employers shall convey any such asset to DePriest within thirty (30) days following DePriest's acceptance of the Trustee's determination of fair market value or receipt of the appraiser's determination of fair market value. The terms of sale shall be cash upon the conveyance of title. DePriest shall decontaminate and remove any tangible personal property he

purchases hereunder from the Wyckoff/Eagle Harbor Superfund Site or the proposed PSR West Seattle Superfund Site within thirty (30) days following the date of purchase, in a manner complying with all federal and state environmental laws and regulations.

4. During the period of his employment, so long as the following activities do not materially interfere with the performance of Employee's duties under this Agreement, DePriest may (a) pursue other employment, (b) pursue personal business opportunities, (c) become involved in personal business ventures, (d) accept other employment, and (e) perform duties incident to any other employment.

5. DePriest may terminate his employment hereunder by providing to both the Trust and the Company written notice of his intent to terminate at least thirty (30) days prior to the effective date of his termination. The Employers may only terminate DePriest for cause. For the purpose of this paragraph, "cause" means a material breach of this Agreement, including a material failure to comply with instructions from the Trustee consistent with DePriest's duties hereunder. Prior to terminating DePriest for cause, Employers shall provide DePriest with ten (10) days prior written notice of the alleged material breach and of their intent to terminate DePriest for cause, during which period DePriest shall be entitled to cure any alleged breach. If DePriest cures the alleged breach, then the termination notice shall be null and void. If a termination is effected by the Employers without cause, DePriest shall be entitled to retain or receive all compensation provided to him pursuant to this Agreement, including but

not limited to, unpaid salary and compensation contemplated in paragraph 2 hereof. Further, DePriest shall be entitled to receive the covenant not to sue to be provided to him under the Consent Decree unless DePriest unilaterally terminates his employment hereunder or DePriest is terminated for cause. The decision to terminate DePriest and/or to issue notice of termination to DePriest, and the content thereof, shall be in the exclusive discretion of the Trust.

6. In the event the Employers desire services from DePriest after the term hereof, DePriest agrees to provide such services on a consulting basis, which agreement shall be the subject of a future writing.

7. This Agreement shall be construed in accordance with the laws of the State of Washington. Venue for any action hereunder shall be properly laid in the United States District Court, Western District of Washington, Seattle Division, where the Consent Decree to which this Agreement is attached is entered.

IN WITNESS WHEREOF, the parties hereto have entered into this Employment Agreement as of the Entry Date.

EMPLOYEE:

Ted G DePriest
Ted G. DePriest

EMPLOYERS:

PACIFIC SOUND RESOURCES, INC.

By: _____

Its: _____

PACIFIC SOUND RESOURCES
ENVIRONMENTAL TRUST

By: _____

Its Trustee

ACCESS AGREEMENT FOR WYCKOFF/EAGLE HARBOR SUPERFUND SITE

Pacific Sound Resources, Inc. (PSR) and the Pacific Sound Resources Environmental Trust, in accordance with Paragraph 17C. of the Consent Decree to which this Access Agreement is referenced as Attachment "G", hereby grant unrestricted and unlimited access to all PSR property at the Wyckoff/Eagle Harbor Superfund Site to the United States Environmental Protection Agency (EPA), its representatives and designees.

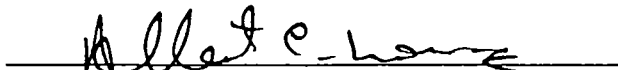
Dated this 30th day of September, 1993.

For Pacific Sound Resources, Inc.:



TED G. DEPRIEST, President

For Pacific Sound Resources Environmental Trust


AL LOWE, Trustee *non, see*